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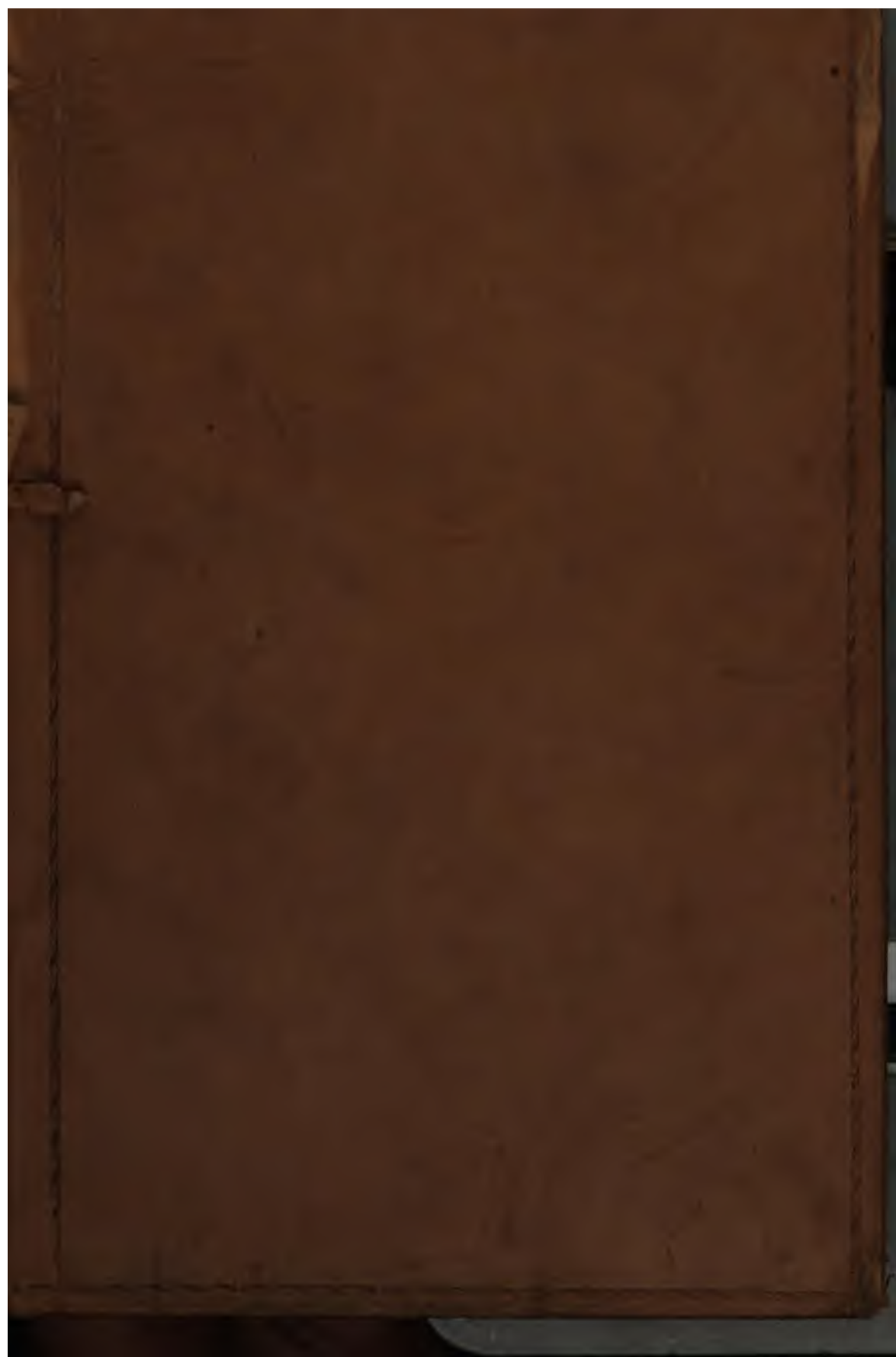
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Per. 2333 d. $\frac{17}{47(1).[36]}$

DIGEST OF ELECTION CASES.

CASES
OF
CONTESTED ELECTIONS
IN THE
HOUSE OF REPRESENTATIVES,
FORTY-FIFTH AND FORTY-SIXTH CONGRESSES,
FROM
1876 TO 1880, INCLUSIVE.



COMPILED BY J. H. ELLSWORTH, CLERK TO THE COMMITTEE ON ELECTIONS,
UNDER JOINT RESOLUTION APPROVED AUGUST 8, 1882.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1883.

FORTY-FIFTH CONGRESS,

SECOND AND THIRD SESSIONS.

COMMITTEE ON ELECTIONS.

John T. Harris, of Virginia.
William M. Springer, of Illinois.
Milton A. Candler, of Georgia.
Jacob Turney, of Pennsylvania.
Thomas R. Cobb, of Indiana.
Jeremiah N. Williams, of Alabama.

E. John Ellis, of Louisiana.
John T. Wait, of Connecticut.
J. N. Thornburgh, of Tennessee.
Hiram Price, of Iowa.
Frank Hiscock, of New York.

J. M. SMITH, *Clerk.*

DIGEST OF ELECTION CASES.

FORTY-FIFTH CONGRESS, SECOND AND THIRD SESSIONS.

PETER D. WIGGINTON vs. ROMUALDO PACHECO.

FOURTH CONGRESSIONAL DISTRICT OF CALIFORNIA.

Held, That the board of supervisors, provided for under sections 429, 430, and 446 of the statutes of California, is an official body having a jurisdiction defined by law, required to keep a record, which is to be signed by its chairman and clerk, and this record, duly certified to the secretary of state, must stand.

Ex parte affidavits cannot be considered as evidence in these cases.

The votes of persons whose names are not on the "Great Register" of voters (California) must be rejected.

Ballots upon which the judges of election had written the names of the voters and the words "challenged, &c.," must not be rejected. If the voter had placed this indorsement upon the ballot, or any other words by which it could be distinguished, they should be rejected.

When a ballot clearly designates the office to be filled, and the name of the person voted for, the voter is never permitted to contradict his ballot by evidence that he intended to vote for a different person, or for the same person for a different office.

The House adopted the majority report February 7, 1878.

Peter D. Wigginton sworn in.

JANUARY 31, 1878.—Mr. JOHN T. HARRIS, from the Committee of Elections, submitted the following

REPORT:

The Committee of Elections, to whom were referred the papers relating to the contested-election case in the fourth Congressional district of California, having had the same under consideration, submit the following report:

The contestant, Peter D. Wigginton, claims the seat now occupied by Romualdo Pacheco upon the grounds following:

1. That in the county of Monterey, in the State of California, being one of the counties composing the fourth Congressional district, the board of county canvassers, being the board of supervisors of said county, met at the proper time and place and canvassed the votes cast for Representative in Congress; and that said board found, and declared as the true result of the vote, that Peter D. Wigginton received 988 votes and

Romualdo Pacheco received 1,208 votes for Representative in Congress in said county. That after the adjournment *sine die* of said board, the clerk thereof, who was not one of the members of the board, altered and changed the vote of said county, so as to make it appear that Mr. Wigginton received only 986 votes in said county. That this false and illegal return was by said clerk certified to the secretary of state as the true result of the votes cast in said county for Representative in Congress. That the returns of the votes cast in all the counties of the fourth Congressional district of said State, as certified to the secretary of state, including the false and illegal return from Monterey County, showed the following result:

	Votes.
For Romualdo Pacheco.....	19, 104
For Peter D. Wigginton.....	19, 103

Majority for Pacheco 1

That by the illegal and fraudulent change made by the clerk of Monterey County, whereby two votes were taken from the number received by Mr. Wigginton, the result in said Congressional district was changed, and the sitting member was counted in by one majority, whereas the contestant should have been declared elected by the same majority.

2. That thirteen persons voted for Mr. Pacheco, in certain precincts and counties of the district, who were non-residents, and not entitled to vote under the laws of the State of California.

3. That three persons voted for Mr. Pacheco whose names were not on the great register, as required by the laws of that State.

4. That six persons voted for Mr. Pacheco whose ballots were so marked as to indicate who cast them, and that such ballots must be rejected under the laws of California.

5. That in two precincts there were more votes counted than there were names on the poll-list; that the judges in each of these failed to draw out the excess of votes and destroy them. That, by this failure on the part of the inspectors, two votes were counted for Mr. Pacheco that ought not to have been counted.

6. That there were such irregularities and illegal practices on the part of the inspectors of election and the voters of Saticoy precinct, in Ventura County, as to invalidate the whole vote of the precinct. In this precinct the vote stood—

For Romualdo Pacheco.....	85
For Peter D. Wigginton.....	51

If the contestant should make good the foregoing grounds of contest, he would add to his own vote two votes in the county of Monterey, and subtract from Mr. Pacheco's vote fifty-eight votes; and the result would then be as follows:

For Mr. Wigginton.....	19, 106
For Mr. Pacheco.....	19, 046

Majority for Mr. Wigginton 59

A careful examination has been made of each of the grounds of contest above set forth, with the result following:

MONTEREY COUNTY.

In Monterey County, according to the returns first sent to the secretary of state, the vote was:

For Pacheco.....	1, 208
For Wigginton.....	986

But contestant claims that those returns should have shown that he received 988, which would have given him a majority of one in the district. Being constrained to differ with the contestant as to this, the following considerations are presented:

1st. By the laws of California it is provided that after the officers of the election shall have counted the ballots, of which tally-lists are to be kept, lists must be attached to the tally-lists, containing the names of the persons voted for, and the number of votes given for each candidate, the number being written at full length, must be signed by the members of the board, and attested by the clerks.

These tally-lists, with the list of persons voted for, with the number of votes received by each, together with the ballots, &c., are required to be sent to the clerk of the county at the county seat.

These returns are required to be canvassed by the board of supervisors of the county. This board of supervisors is not a board simply created for the purpose of canvassing the returns of an election, and which ceases to exist upon that duty being discharged; but it is an official body of a continuing character, required to keep a record of its proceedings, holding sessions day after day—on one day signing and attesting the proceedings of the day next preceding, &c. Its character is sufficiently shown in the opinion of Mr. Justice Rhodes, at the beginning of that opinion, on page 34, part first, of the record. As to this there can be no doubt, and it is an important fact to be noted.

The duties of this board touching the matter of elections are thus defined by the statute:

SEC. 4046. Subdivision 3. To establish, abolish, and change election-precincts, and to appoint inspectors and judges of elections, canvass all election-returns, declare the result, and issue certificates thereof.

SEC. 4030. Subdivision 1. The clerk of the board must record all the proceedings of the board.

SEC. 4029. The clerk of the county is *ex-officio* clerk of the board of supervisors. The records must be signed by the chairman and the clerk. The clerk must be paid such compensation as is provided by law in full for all services as clerk of the board.

This board having this jurisdiction, the statute further provides as to the manner of canvassing the returns in the following sections:

SEC. 1281. The canvass must be made in public, and by opening the returns and estimating the vote of such county or township for each person voted for, and for and against each proposition voted upon at such election, and declare the result thereof.

SEC. 1282. The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show—

1. The whole number of votes cast in the county.
2. The names of the persons voted for and the proposition voted upon.
3. The office to fill which each person was voted for.
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions.
5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

Here, then, we have an official board, having a jurisdiction defined by law, *required to keep a record*, which is to be *signed by its chairman and the clerk*.

The supreme court of California, in the litigation over this very case, said of this record thus made (see page 34 of the record in this case):

A record kept and authenticated in the manner provided by those two sections (4030, 4029) is the evidence of the proceedings of the board, and is the only evidence thereof in cases where the proceedings are required to be entered of record.

Then the statute further provides that *this record* shall be certified to the secretary of state, as will appear by the following sections:

SEC. 1344. The clerk of each county, as soon as the statement of the vote of his county at such election is made out and entered on the records of the board of super

visors, must make a certified abstract of so much thereof as relates to the vote given for persons for Representative to Congress.

SEC. 1345. The clerk must seal up such abstract, indorse it "Congressional Election Returns," and, without delay, transmit it by mail to the secretary of state.

And from the certified copies or abstracts of these records from the various counties the secretary of state makes his certificate to the governor, showing the person having the highest number of votes in the district.

From this it will be seen that the several counties have records of the votes cast in them respectively, and that in the office of the secretary of state is a record of the votes cast in all the counties. From the record thus made and kept in the office of the secretary of state the certificate was sent to the governor, showing that contestee had a majority of the votes cast in the district, and on which the governor issued to him his certificate of election.

Now, the claim of the contestant in this case is that, as to Monterey County, he should be allowed 988 votes; whereas the record of that county, as transmitted by the clerk to the secretary of state, only shows him to have received 986.

It is not disputed that the record thus transmitted shows that the contestant received only 986. He seeks to impeach that record. It certainly imports verity. We do not contend that the committee or the House cannot go behind it and ascertain the real facts; but we do contend that it must be presumed to be correct until the contrary is proven; and it is incumbent on the contestant to prove that it is not correct.

The only proof he has offered consists of *ex-parte* affidavits, which cannot be used or considered for such a purpose. The affidavits of Blankenship and Gordon may therefore be dismissed from consideration.

But it appears in the record that the contestee instituted a proceeding in mandamus against the secretary of state to compel him to certify the vote according to the records of his office, created as above shown to be required by law, and on his petition in that case the contestee set forth an affidavit made by the clerk of Monterey County touching the facts as to the canvassing the returns of that county, and it is claimed by the contestant that the contestee having set forth that affidavit in his petition, which was sworn to by him, it may be considered as evidence against contestee to impeach this record. Without conceding this to be sound as a legal proposition, and for the purpose of the argument conceding that this affidavit may be used as evidence, it certainly will not be denied that the whole of it is to be taken; and that being the case, it completely disposes of this controversy as to Monterey County. As this affidavit is made to play so important a part in this case, it is proper to quote it in full. It is as follows:

I, John Markley, county clerk of Monterey County, and *ex officio* clerk of the board of supervisors of said county, do hereby certify as follows, to wit: That on the 13th day of November, 1876, the board of supervisors of said county met at their usual place of meeting, in the office of the county clerk of said county, to canvass the vote polled in said county on the 7th day of November, A. D. 1876; that there were present at said meeting Supervisors Edwin St. John, S. B. Gordon, and A. J. Blankenship. The board organized by electing Mr. Blankenship chairman *pro tem.* of said meeting. The board proceeded to canvass the vote, Mr. Blankenship opening the large envelopes containing a copy of the great register, poll-list, and tally-list, and handing to Mr. Gordon the tally-list.

Mr. Gordon read out the vote received by each person, and as said vote was read out by Mr. Gordon the clerk or his deputy took down the same with a lead-pencil in a tabulated statement prepared for that purpose. At the same time John B. Scott, county auditor, and L. P. Carter kept an account of so much of said vote as related to members of Congress, as the same was read out by Mr. Gordon.

After the board had opened all the envelopes, and counted all the votes as per the tally-list therein contained, they directed the clerk to foot up the vote as the same appeared on the tabulated statement kept by said clerk. After footing the same and ascertaining the result of the vote on county officers, after passing an order declaring the county officers receiving the highest number of votes for the offices which they had been voted duly elected, directing the clerk to issue the proper certificates to them, the board adjourned *sine die*. At the time the board adjourned, as aforesaid, the vote stood, on the tabulated statement kept by the said clerk, at San Lorenzo precinct, P. D. Wigginton, 59; and for the said P. D. Wigginton in the county, 988. That about one hour after the adjournment of said board, and before the pencil-minutes and tabulated statement kept by the clerk had been transcribed to the minutes of said board, Mr. St. John, a member of said board, returned to the office and stated to me that he thought a mistake had been made in the vote for Congressman; that Mr. Scott and Mr. Carter only had 986 votes for Mr. Wigginton. We looked over the figures which I had made and found that they had been added correctly. I then gave to Mr. St. John a copy of my figures of the vote for Congressman, and suggested to him that he compare the same with the figures of the vote as the same had been kept by Mr. Scott, and said that he would in that way find out where or in which precinct the difference was, and if there was a mistake, we would correct it in the morning.

After supper that night I wrote up the minutes and transcribed the statement made in pencil to the minute-book. On the morning of November 14, Mr. J. W. Leigh and myself were in the clerk's office. Mr. St. John came in and stated to me that the difference in the figures was in San Lorenzo precinct. I got the tally-list from San Lorenzo precinct, and Mr. St. John, Mr. Leigh, and myself examined the same. We found that Mr. Wigginton had only received 27 votes, whereas the tabulated statement and the minutes, as they stood then, had allotted to Mr. Wigginton 29 votes in said precinct. The tally-list was in all respects regular. The 27 was in marks in figures twice and written twice.

We all three felt fully convinced that Mr. Wigginton had received in the precinct only 27 votes, and the clerk had made a mistake in putting down 29. I then and there changed the vote, as entered on the minutes, from 29 to 27, and the total vote from 988 to 986, and thereafter, and on the same day, the chairman of said board signed the minutes.

That on or about the 15th day of November, 1876, I made an abstract of statement of so much of said vote as related to persons voted for Representatives to Congress, and duly certified the same to the secretary of state of California; that said statement so certified as aforesaid, only gave Mr. Wigginton 27 votes in said San Lorenzo precinct, and only gave him 986 in the county; that the minutes of said board, in relation to said vote, have not been changed since the same were signed by the chairman as aforesaid; that said minutes had not been changed since I made and forwarded the abstract as aforesaid; that the minutes of said board now show 27 votes in San Lorenzo precinct and 986 votes in the county for Mr. Wigginton, and that said abstract of statement, so forwarded as aforesaid, contains a full, true, and correct statement of the vote for Representative of Congress, as the same appears entered in the records of said board of supervisors at the present time.

[SEAL.]

JOHN MARKLEY,
County Clerk.

From this it will be seen that the two votes in question occurred in putting down the vote of San Lorenzo precinct; that in making a pencil-memorandum, to be transcribed to the record, the clerk put down for contestant 29 votes, and afterward changed it to 27 votes in the manner described in the affidavit, and for the reasons therein set forth.

It must be borne in mind that the contestant nowhere attempts to prove, in the manner pointed out by the statute in reference to contested elections, that he received twenty-nine votes in San Lorenzo precinct. He relies upon the evidence disclosed in the mandamus proceedings in the supreme and district courts of California to prove that the count made by the board of supervisors showed that he received twenty-nine votes in that precinct. The president of the board and the clerk having signed a record showing only 986 votes in Monterey County for contestant, and this record having been duly certified to the secretary of state, and the supreme court of California having decided, after a careful examination of all the facts as they appeared in contestant's petition and contestant's answer, that the record thus certified

to the secretary of state must stand, under the laws of California, until set aside or shown to be erroneous by a contest, under the statute in such cases made and provided, your committee are of the opinion that the truth or falsity of the clerk's return is not put in issue in this contest, and that the record thus certified by the clerk in the manner required by the law of California must stand. If contestant had felt himself injured by that record, it was his duty and privilege to show its falsity in the manner pointed out in the statute.

NON-RESIDENT VOTERS.

2. Your committee have carefully examined the evidence relating to the non-residence of the thirteen persons who are alleged by the contestant to have voted for Mr. Pacheco. The cases are as follows:

F. W. Hoffman resided at Pear-Tree Ranch, in San Diego County, forty-eight miles from the city of San Diego, in December, 1874, when he left the State and went to Arizona and Nevada, and while absent was engaged in mining and prospecting. He says in his evidence that he left there (Pear-Tree Ranch) with the intention of returning there, because he thought he owned property there. He returned to San Diego County twelve days before the election, and was in San Diego City, where he voted, only four days before the election. He had been in San Diego before he left the State, but had no residence there, and did not go there to remain. If he had returned to Pear-Tree Ranch he might have voted there unless he was disqualified by section 1239, paragraph 7, of the Statutes of California. It is clear, however, that he never had a legal residence in the city of San Diego, where he voted. He voted for Mr. Pacheco. His vote must be rejected. (Record, pp. 4, 7, 8, 22.)

Thomas B. Landhardt voted in the city of San Diego; came from Los Angeles to San Diego October 14, prior to the election; had been in the county only twenty-two or twenty-three days before the election. His vote was challenged, and the inspectors wrote on the back of his ticket his name and the words, "Challenged because not in the precinct thirty days; challenge disallowed," and signed their own names to this statement. The county clerk produced the box containing the ballots and identified this ballot. It contained the name of Romualdo Pacheco for Representative in Congress. The vote must be rejected, as the law of California requires thirty days' residence in the precinct to entitle a person to vote. (Record, pp. 12, 13, 14, 17.)

Charles Gilbert resided for thirty days immediately preceding the election at Alvah Mitchell's house. He voted at Poway precinct, San Diego County. Alvah Mitchell was not allowed to vote in the precinct because he did not live in it; and one witness testified that he knew the line dividing the precinct, for he saw it surveyed, and that Mitchell's house was not in the precinct. There can scarcely be any doubt as to how he voted. (Record, pp. 28, 29, 23.)

Frederick Reetzke testified that he (Reetzke) voted for Mr. Pacheco, and that—

Gilbert always told me he was a Republican; he asked me which were the Republican tickets; he took one, folded it up, and, to my honest belief, put it in. * * * I only showed him the Republican ticket, with Pacheco's name on it; he took it, folded it up, and, to my honest belief, voted it. (Record, p. 28.)

In the absence of the voter's own evidence, it would be difficult to prove more certainly than is done in this case for whom a person voted. A person cannot be compelled to state for whom he voted; and the Supreme Court of the United States has expressly decided that where a

witness cannot be compelled to answer he need not be called. (6 Peter's Repts., 352, 367.) But Mr. Pacheco might have called the voter, and if he had not claimed his privilege, he could have made it clear for whom he did vote. Mr. Pacheco not having done so, nor having shown his inability to procure his deposition, we may infer that Gilbert, if produced, would have corroborated the witness whose deposition is in the record. Gilbert did not reside in the precinct where he voted, and his vote must be rejected.

Charles Waterman voted at Mayfield, Santa Clara County. He was a single man. He lived in Mayfield four or five years. Six or eight months before the election he sold his interest in the hotel business; said "the people of Mayfield might go to thunder; he wanted nothing more to do with them, and left" there. He said "he left this town for good." He took employment in a circus, and traveled from place to place in California and Oregon. He returned to Mayfield on the morning of the election. His vote was challenged. He swore it in, and left the town on the same day. It is conclusively shown that he voted for Mr. Pacheco. The law of California says "that place must be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning." Waterman having left Mayfield "for good," as he declared when he took his departure, if he should afterward conclude to return, he must acquire his residence again the same as if he had never resided in the place. Under the law of California, and by his own declaration, he was not a resident of the precinct in which he voted. His vote must be rejected. (Record, pp. 33, 34, 40, 47.)

Contestant submitted evidence tending to prove that William Pratt, or G. C. Pratt, as some of the witnesses call him, was a non-resident of the precinct where he voted, and that he voted for the sitting member. The testimony in reference to this voter will be found in the record, pages 33, 36, 40, and 42, but we do not think it sufficient to establish the fact of non-residence. (Record, pp. 34, 36, 40, 42.)

Moses Atkinson voted at Mayfield, in Santa Clara County. He rented a ranch two miles from Mayfield, across the creek, in San Mateo County. One witness, Decker, testified (Record, p. 52) that Atkinson told him the night of the election that he lived on the ranch, but he claimed his residence in Mayfield, because he slept more in Mayfield than on the ranch. He was a single man, and his brother also lived on the ranch. When in Mayfield he slept at the hotel; he kept his horses on the ranch. Another witness, Jenkins, testified that Atkinson was a resident of San Mateo County for the last one or two years before the election; that he rented land and lived there; that he voted the whole Republican ticket, and that he always said so. It is clear from the evidence that Atkinson lived at the ranch in San Mateo County at the time of the election. The fact that he slept more at Mayfield, where he voted, than at the ranch, does not affect the question of residence. The law of California provides that (section 1239, paragraph 5) "A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home." This provision of law fixes Atkinson's residence in San Mateo County. His ignorance of the law cannot legalize his vote in Santa Clara County where he voted. His vote must be rejected.

Joseph Dickerson voted at Mayfield. Evidence was taken tending to show that he was a non-resident and that he voted for Mr. Pacheco. But neither fact is conclusively proven. (Record, p. 34.)

William M. Beekman voted in Saticoy precinct, Ventura County. He

was probably a non-resident, but it does not satisfactorily appear for whom he voted. (Record, pp. 50, 52, 57, 59.)

F. C. Kelley was telegraph-operator in the Signal Service, United States Army, at Campo, San Diego County. He enlisted in the Signal Service Corps in Cincinnati, Ohio; came to California in that service, and continued in charge of the station at Campo from March, 1875, until the day of the taking of his deposition—July 19, 1877. Was married, and his family were with him at Campo. He had never been in California until he went there in the United States service. The following questions and answers relate to his evidence:

Q. Where did you reside on the 7th day of November, 1876?—A. At a place called Campo, in San Diego County, California.

Q. How long had you resided there?—A. A year, eight months, and three days prior to the election. I came there the 4th of March, 1875. (Record, pp. 24, 25.)

This is the testimony of the voter, and may be regarded as his understanding of the law of his residence. But his judgment upon a question of this kind cannot control the decisions of courts or of this House. The law of the State of California, which must control in this case, is as follows:

A person must not be held to have gained or lost residence by reason of his presence or absence from a place while employed in the service of the United States or of this State, nor while engaged in navigation, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison. (Section 1239, paragraph 2.)

Aside from the statutory provision, the well-recognized rule of law governing in cases of this kind is this: that the fact that an elector is in the Army does not disqualify him from voting at his place of residence; *but he cannot acquire a residence so as to qualify him as a voter by being stationed at a particular place while in the service of the United States* (People *vs.* Riley, 15 Cal., 48; Hunt *vs.* Richards, 4 Kans., 549; Biddle *vs.* Wing, Clark & Hall, 504; McCrary, sec. 41.)

The person in question having gone to California in the military service of the United States, his legal residence remained at the place of enlistment, and he could not acquire a residence in California while in that service. His vote must be rejected. He testified that he voted for Mr. Pacheco, and upon this point there is no dispute.

James Qualls voted at Saticoy precinct, Ventura County. Was in the precinct only ten days prior to the election. He had no fixed habitation. His occupation was a cattle-herder. He worked for Mr. Randolph, on the Sespe, from about the 23d of July, 1876, probably up to the time he came to Saticoy; but he was not in Saticoy thirty days previous to the election. He said his residence was on the Sespe on the 7th day of November, the day of the election. He was in Mr. Randolph's employ in December after the election. The Sespe was not in Saticoy precinct. He said he voted the Republican ticket, and it was proved that Mr. Pacheco's name was on that ticket. His vote must be rejected on the ground that he was a non-resident of the precinct. (Record, pp. 51, 53–55, 56, 63, 77, and 78.)

Pedro Parris voted in Ventura precinct, Ventura County. On the 9th day of June, 1876, he was a resident of Ojai or Cañada precinct, in that county. Was there arrested, charged with grand larceny, and on the 14th day of June was committed to the county jail, in default of bail, to await the action of the grand jury. The jail was in Ventura precinct, where he voted. After he was committed to jail his family moved into Ventura precinct. He was released from jail within fifteen days prior to the election. His vote was challenged but sworn in. It is clear that he voted for Mr. Pacheco. The same rule as to residence

must be applied to this person as was applied to Mr. Kelley already referred to. He could not acquire a residence in Ventura precinct while in prison. His vote must be rejected. (Record, pp. 65, 67, 68, 70, 74, 75, and 84.)

Juan Parris voted in Ventura precinct, Ventura County. Came to Ventura about twelve days before the election to get his brother Pedro out of prison. He lived in Ojai or Nordhoff precinct prior to that time. His vote was twice challenged. The first time he refused to take the oath. Afterward he came back to the polls; was again challenged, and took the oath and voted. The evidence is conclusive that he did not reside in the precinct where he voted, and his vote must be rejected. He voted for Mr. Pacheco. (Record, pp. 68, 70, 74, 75, and 84.)

J. A. Scott voted at Ventura precinct, Ventura County. By his own evidence he was not a legal voter. Prior to September 14, 1876, he lived with his family at Lyons Station, Los Angeles County. He there formed an intention to remove to Ventura precinct, and went there to secure a house. He returned to Lyons Station, and remained there with his family until about the 26th of October, prior to the election, when he went with his family to Ventura. He began housekeeping about the 1st of November. (Record, pp. 72, 77, and 84.) The law of California covers his case. Section 1239, paragraph 10, is as follows: "The mere intention to acquire a new residence, without the fact of removal, avails nothing; neither does the fact of removal without the intention." His vote was challenged. He took the oath required by law and voted. He was not a legal voter. It was stated in the evidence that he was a Republican, and was "voted" by those who were working for Mr. Pacheco. Mr. Scott's deposition was taken by Mr. Pacheco's attorney. He was not asked how he voted. The proof that he voted for Mr. Pacheco is sufficient to shift the burden upon the party seeking to sustain his vote, and, inasmuch as the elector was produced and sworn, and no effort was made to show for whom he voted, it may be assumed from all the evidence that he voted for the sitting member. (McCrary, sections 293, 294; Cushing's American Parliamentary Law, sections 199, 210.)

NOT ON THE GREAT REGISTER.

The contestant alleges that three persons voted for the sitting member whose names were not on the great register.

Juan de Dios Ortega and his brother Pedro Ortega, voted at Campo precinct, San Diego County, for Mr. Pacheco. Their names were not on the great register, as required by law, and their votes must be rejected. (Record, pp. 15, 18, 26, and 27.)

Pedro Lopez voted at Anaheim precinct, Los Angeles County, for Mr. Pacheco. It is alleged that his name was not on the great register. There was a name of Pedro Lopez on the register, but a witness stated there were two of that name, and that the one on the register lived in Los Angeles City. The evidence is not conclusive on this point. The vote should be counted. (Record, pp. 31, 32.)

MARKED BALLOTS.

The law of California on the subject of marked ballots is as follows:

Sec. 1206. When a ballot found in any ballot-box bears upon the outside thereof any impression, device, color, or thing, or is folded in a manner designed to distinguish such ballot from other legal ballots deposited therein, it must, with all its contents, be rejected.

There were six ballots voted for Mr. Pacheco upon which the judges of election indorsed the names of the voters and the words "Challenged because not in the precinct thirty days—challenge disallowed," and then signed one or two names of the inspectors of the election. While the strict letter of the law would exclude these ballots, yet the spirit of the law is evidently otherwise. If the voter had placed this indorsement upon the ballot, or any mark whatever by which it could be distinguished from other ballots, they should be rejected. The law was made to protect the voter, and not to disfranchise him.

MORE BALLOTS THAN NAMES ON THE POLL LIST.

In two precincts, Saticoy and Lan Buenaventura, there were more ballots counted than there were names on the poll-list; but it does not appear who got the benefit of the excess.

SATICOY PRECINCT.

The contestant alleges that there were such illegal practices at this precinct as to invalidate the whole poll. The law of California requires that no tickets shall be folded or unfolded or exhibited within 100 feet of the polls. This was done during the whole day at this precinct. But while the parties who violated the law may be punished, the law was not intended to provide that such conduct should invalidate the election. We cannot see any good reason for rejecting this poll.

CONTESTANT'S CASE.

This concludes the questions raised by contestant. Recapitulating, it will be seen that his allegations as to twelve persons who voted for Mr. Pacheco, and who were not entitled to vote, have been sustained.

THREE OTHER CASES.

The contestant alleges that two persons by the name of Smock, and another whose name is not given, voted at Bakersfield, Kern County, for Mr. Pacheco, who were not residents of the precinct for thirty days preceding the election. Depositions were taken in regard to these persons, in pursuance of notice in the contest, in due time, attorneys of both parties being present, and such depositions were properly forwarded by mail to the Clerk of the House of Representatives. But these depositions have never been received by the Clerk or any officer of the House. The contestant has obtained the *ex parte* affidavits of E. E. Calhoun, who was contestant's attorney, and of Samuel L. Cutter, who was contestee's attorney, at the taking of these depositions (Record, pp. 94, 95, and 96), which affidavits, sworn to October 18, 1877, after the assembling of the special session of Congress, set forth the substance of the lost depositions. If we were to consider as legal evidence these *ex parte* affidavits, one of them made by Mr. Pacheco's attorney, we should be compelled to reject the votes of these three persons. But we are not permitted to consider *ex parte* affidavits as a part of the evidence in the case. If the facts established by the lost depositions were material to the decision of the matters in controversy, and if the three votes in question should be sufficient to determine the result, the contestant's remedy would have been to retake the depositions, giving due notice to the opposite party. But not having discovered the loss until Congress assembled, he has endeavored to supply the lost depositions in the manner indicated.

ILLEGAL VOTING FOR CONTESTANT SUBMITTED BY CONTESTEE.

The contestee alleges that the following persons voted for Mr. Wigginton, and were illegal voters:

Jesus Yorba voted in San Diego, but was a resident of Los Angeles. It is alleged that he voted for Mr. Wigginton. It is proven that he had not resided in the precinct where he voted thirty days previous to the election. But the evidence is conflicting as to the candidate for whom he voted. Yorba was a Democrat, and went to the polls and voted with one Angle Smith, also a Democrat. Yorba was what is called "a native Californian," and Smith was a half-breed American and Californian. It was proven that the native Californians, as a class, voted for Mr. Pacheco, including those who claimed to be Democrats, and were unwilling to acknowledge that they would vote for a Republican. And one witness gave it as his opinion that Jesus Yorba voted for Mr. Pacheco. In the midst of this conflicting evidence it is not certain for whom he did vote. His vote, although illegal, cannot be deducted from the vote of either of the parties. (Record pp. 99, 100, 101, 104, 107.)

George M. Clark voted for Mr. Wigginton at San Diego. He wrote his own name on the bottom of the ticket with a lead pencil. (Record, pp. 100-105.) The law of California in reference to marked ballots is as follows:

Sec. 1206. When a ballot found in any ballot-box bears upon the outside thereof any impression, device, color, or thing, or is folded in a manner designed to distinguish such ballot from other legal ballots deposited therein, it must, with all its contents, be rejected.

Sec. 1207. When a ballot found in any ballot-box bears upon it any impression, device, color, or thing, or is folded in a manner intended to designate or impart knowledge of the person who voted such ballot, it must, with all its contents, be rejected.

These provisions were evidently intended to secure to the voter absolute secrecy as to his ballot, and to place it within his power to vote a ballot which could not be distinguished by the election officials, the challengers, or outsiders from any other ballots that were being voted. Section 1206 relates wholly to marks on the outside of the ballot, and cannot be applied to the ballot in question, as it is conceded that this voter wrote his name on the face of the ballot. And it is very doubtful whether the strict letter of the other section (1207) applies to Clark's ballot. There was nothing on the face of the ballot "*to designate or impart knowledge of the person who voted such ballot.*" The inspectors were not authorized to presume that Clark voted this ticket merely because they found his name upon it. If any presumption is to be indulged in, it is this: that the name written on the ballot was intended to be voted for, instead of the printed name next above it. Hence this ballot had nothing on it to designate or impart knowledge of the person who voted it. The person who voted it could identify it, and so could every voter identify his ticket if he had scratched one name and written another upon it. He would recognize his own handwriting. But the statute was not intended to place it out of the power of each voter to recognize his own ballot. It was intended to protect the voter in his right to vote a secret ballot. If there were any doubt as to the letter of the law, there can be none as to the spirit of it. There is no charge or suspicion of fraud, intimidation, or improper influences being exerted over the voter. It would certainly be perfectly legal for the voter to publish how he voted. The evidence in this case fails to disclose what was done by the inspectors with Clark's ballot. Nothing is said as to whether they counted or rejected it. If it be contended that the law

required that the ballot should be rejected, then, in the absence of proof to the contrary, we must presume that the election officers did their duty, as required by law, and rejected it. And if it is contended that the ballot was a legal one, then we must assume, in the absence of proof to the contrary, that the officers have done their duty and counted it. In either event we are not at liberty to change the result by counting or rejecting this ballot.

John Doran voted for Mr. Wigginton in the third ward of the city of San Diego. He was a laborer, without family, and worked from place to place. He had only been in the precinct where he voted about a week, and at the hotel where he stopped he gave his residence at Cajon, which is in another precinct. His vote must be rejected. (Record, p. 102.)

Joseph Marks and John Geddens voted for Mr. Wigginton at Anquanga precinct, San Diego County. One witness, William Reed, testified that they had not lived in the precinct thirty days before the election. The evidence is very slight, but perhaps enough to shift the burden upon the party claiming their votes. There is no other evidence in the record, and the votes should be rejected. (Record, p. 115.)

James A. Keyes voted at Campo, San Diego County, for Mr. Wigginton. He was born in Ireland, was fifty-three years of age, and came to the United States in 1847. He testified that he had not, previous to the election, applied for any naturalization-papers, and had never declared his intention to become a citizen until the day his deposition was taken. He was not cross-examined, as neither contestant nor his attorney was present at the taking of his deposition. (Record, p. 117.) Keyes must have sworn that he had been naturalized in order to get his name on the great register. But, in the absence of any evidence contradicting his deposition in the record, his alien character is established, and his vote must be rejected.

Thomas Scott Methvin voted at Pleasant Valley precinct, in Ventura County. An effort was made to prove that he was a non-resident of the State and precinct, and that he voted for Mr. Wigginton. The voter was challenged, on the ground of non-residence, and he swore his vote in.

The legal status of this voter is in considerable doubt. It is not conclusively proven that he was a non-resident, nor is it certain that he voted for the contestant. The evidence is not sufficient to warrant us in rejecting his vote. (Record, pp. 129, 130-132.)

John Peterson voted for contestant at Redwood City, San Mateo County. He obtained his naturalization-papers from the twelfth district court, at San Francisco, the day before the election. John Hanna testified at the court that he knew Peterson in California in 1858, and at that time Peterson was a minor. Upon this evidence the court granted the papers. Peterson's evidence was taken in the contest to show that when he was in California he remained only a few weeks, and returned to Denmark, and that he did not come to this country to reside until 1868. This would make him of age when he came the second time, as he was born in 1841. Upon this evidence (Record, pp. 144-146) the contestee asks us to reject Peterson's vote on the ground that his naturalization-papers were fraudulently procured. His papers were issued by a court of competent jurisdiction, were regular in every respect, and upon the evidence before the court at the time, the court decided rightly. Your committee are of the opinion that papers issued in this manner cannot be attacked in a collateral proceeding. And if this could be done, Peterson's oath would have little weight in such a contest, for he

either swore falsely before the court or in the contest. He was corroborated in his testimony before the court, but his evidence in the contest denying his citizenship stands unsupported.

Thomas O'Mara voted in the city of Los Angeles. The contestee claims that he falsely personated another person of the same name. He was challenged on the ground that he was not the person whose name was on the great register, but he swore that he was, and his vote was received. The evidence barely raises a doubt upon this point, and is not sufficient to establish the illegality of the vote. The evidence also fails to show for whom he voted. (Record, p. 149.)

Gustave C. Perret voted at the fourth precinct of Los Angeles City. His vote was challenged on the ground that he was not a citizen of the United States, and that he was not enrolled upon the great register of Los Angeles County. He presented a certificate of registration, and his vote was received by the board of election. There is some doubt as to whether this voter had been naturalized, but it is not shown for whom he voted. The only evidence as to the candidate for whom he voted is that he got a ticket from a Democrat, but the witness did not know whether the elector voted that ticket or not. (Record, pp. 159, 160, 161.)

William A. Brophy voted for contestant in the city of Los Angeles. His residence was in Soledad Township. His vote must be rejected. (Record, p. 159.)

Francis Tamiet voted in the city of Los Angeles. There is some doubt as to his being a citizen, but there is no evidence that he voted for the contestant. (Record, pp. 155, 156, 161.)

At La Graciosa precinct, in Santa Barbara County, two ballots were voted upon which Mr. Wigginton's name was printed and Mr. Pacheco's written, and the printed name was not erased. Under section 1203 of the statutes of California both these ballots should have been counted for Mr. Pacheco, but it seems that only one of them was. He is therefore entitled to one vote more and Mr. Wigginton one less in this precinct.

Pablo Rios voted at Wilmington, Los Angeles County. He arrived at the polls late in the day, and fearing they would soon be closed, took the first ticket he could find. It was a Democratic ticket, but he did not desire to vote for any person on that ticket except for George Hinds for supervisor of the county. He erased all other names on the ticket, and wrote Mr. Pacheco's name on the top at the right-hand side, opposite the names of the Presidential electors, which were erased. The judges returned this ballot as a vote cast for R. Pacheco for Presidential elector, and did not count it for him for Representative in Congress. Rios was called, and testified that he intended to vote for Pacheco for Representative in Congress. The evidence is that the names on the ballot, except that of Hinds, were erased, but there is no evidence that the words "for Presidential electors," or the words "for Representative in Congress," were erased. Upon the face of the ballot, according to the evidence, Mr. Pacheco was voted for for Presidential elector. There is no ambiguity about this. The law of California, in reference to counting obscure ballots, is as follows:

SEC. 1201. No ballot or part thereof must be rejected by reason of any obscurity therein in relation to the name of the person voted for, or the designation of the office, if the board, from an inspection of the ballot, can determine the person voted for and the office intended.

An inspection of this ballot would show that the name of R. Pacheco

appeared after the words "for electors of President and Vice-President of the United States." Can such a ballot be counted for the contestee for Representative in Congress, or is it admissible for the voter to explain or contradict such ballot by final evidence after it has been cast? Mr. McCrary, in his work on elections (section 407), states the rule which should govern in cases of this kind as follows:

While it is true that evidence *aliunde* may be received to explain an imperfect or ambiguous ballot, it does not by any means follow that such evidence may be received to give a ballot a meaning or effect hostile to what it expresses on its face. The intention of the voter cannot be proven to contradict the ballot, or when it is opposed to the paper ballot which he has deposited in the ballot-box. (See, also, *People vs. Seaman*, 5 Denio, 409; *State vs. Goldthwait*, 16 Wisc, 552; *People vs. Fegurson*, 8 Cowen, 102; *People vs. Cook*, 14 Barbour, 259.)

When a ballot clearly designates the office to be filled and the name of the person voted for, no court has ever permitted the voter to contradict his ballot, by evidence that he intended to vote for a different person, or for the same person for a different office.

Your committee do not feel at liberty to depart from the unbroken line of precedents in cases of this kind, although it is conceded in this case that the rule works a hardship to the voter. It is sometimes necessary to sacrifice the merits of a case in order to maintain an inflexible legal rule. This ballot seems to present such a contingency.

Some irregularities occurred in reference to the vote of Temecula precinct, San Diego County. This precinct gave a majority of 9 votes for contestant. But for the reasons stated in reference to Saticoy precinct, we are of the opinion that the precinct would be counted as returned. Neither precinct should be excluded.

From the foregoing, it will be seen that the contestant's vote, as returned, was 19,103. From this must be subtracted 1 vote in La Graciosa precinct, where contestee's name was printed on the ballot, but not erased, and contestee's name was written under it; and also the votes of John Doran, Joseph Marks, John Geddins, James A. Keyes, and W. A. Brophy; in all, six votes.

From the foregoing it will appear that Mr. Wigginton received, according to the returns, 19,103. From this we must deduct the vote illegally counted for him and the five votes illegally cast for him, which would make his legal vote 19,097.

Mr. Pacheco received, according to the returns, 19,104. To this must be added one vote in La Graciosa precinct, which would increase his vote to 19,105. From this must be deducted the 12 illegal votes cast for him, which would make his legal vote 19,093.

CONCLUSION.

Your committee, therefore, find that Peter D. Wigginton received for Representative in Congress from the fourth district of California 19,097 votes, and that Romualdo Pacheco received 19,093 votes; and that the former, having received a majority of all the legal votes cast, is duly elected.

Your committee recommend the adoption of the following resolutions:

Resolved, That Romualdo Pacheco is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the fourth Congressional district of California.

Resolved, That Peter D. Wigginton is entitled to a seat in this House

as a Representative in the Forty-fifth Congress from the fourth Congressional district of California.

All of which is respectfully submitted.

JOHN T. HARRIS.
JAC. TURNEY.
JERE N. WILLIAMS.
THO'S R. COBB.

Excepting the conclusion of the majority of the committee as to the vote of Charles Gilbert, I concur in this report.

MILTON A. CANDLER.

I concur in the report of the committee, except as to the vote of Monterey County and as to Pratt and Methvin, and file a separate opinion herein.

WILLIAM M. SPRINGER.

I agree with the conclusion of the majority, except with regard to the cases of Scott and Waterman. In these cases I am of opinion that the votes were legal, and should be counted for Pacheco.

E. JNO. ELLIS.

ADDENDA TO REPORT.

The undersigned agrees with the majority of the committee in their report, except that part of it relating to the vote of Monterey County and the votes of Pratt and Methvin.

In reference to the vote of Monterey County, it appears that the clerk of the county, who was also clerk of the board of supervisors, whose duty it was to canvass the votes cast, changed the result as found by the board of canvassers, altered the record so as to make it correspond with his own count, and so certified it to the secretary of state.

The board of canvassers, consisting of three persons, met at the proper time and place and canvassed the votes cast, and found, and caused to be entered of record, that Mr. Pacheco received 1,208 votes, and Mr. Wigginton 988. The board then adjourned *sine die*. The clerk entered this result upon the record as required by law. The next morning one of the members of the board came into the clerk's office, and he and the clerk concluded that the board had made an error in the count of San Lorenzo precinct; that Mr. Wigginton had credited to him 29 votes in that precinct, but that they thought 27 votes were all he had really received. Without notice to the other members of the board, the clerk altered the record so as to make it appear that Mr. Wigginton had received only 27 votes in that precinct, and also changed the aggregate vote of the county from 988 to 986. This altered record was presented by the clerk to the chairman of the board for his signature, and it was signed by him; but the clerk did not notify him that the change had been made. If the clerk had been actuated in making the alteration of the record by a desire to arrive at the truth, he certainly would have informed the chairman and the other members of the board of the alteration he had made; for, although slight, it actually changed the result in the whole district and elected Mr. Pacheco by one majority, instead of Mr. Wigginton by the same majority.* The change in the

record then became a matter of the most vital importance, and as one week had elapsed from the day of the election to the time when the change was made, it is presumable that the clerk was aware of the result in the other counties of the district, and knew when he made the change of the record that he had actually changed the result in the whole district. Considering the exciting and important character of the election, and the further fact that the political complexion of the National House of Representatives was exceedingly close and at that time not definitely known, and considering further that the change was made without informing the majority of the board of the fact, the conduct of the clerk is open to grave suspicion. That his conduct was illegal there can be no question; that it was fraudulent may reasonably be presumed, in the absence of proof to the contrary.

On the 17th day of November the clerk's certified abstract of the vote in Monterey County was filed in office of secretary of state. This return showed that Mr. Wigginton had received 986 votes instead of 988, as actually found by the board of canvassers.

On the 8th day of December thereafter, an alternative writ of mandate was issued out of the district court of the twelfth judicial district of the State of California, on the application of Peter D. Wigginton, and directed to and served upon the county clerk of Monterey County, requiring and commanding him to forthwith make and certify to the secretary of state a true abstract of the vote for Representative in Congress, as ascertained and declared to have been cast in said county of Monterey by the board of supervisors of said county, and as was entered in pursuance of law upon the records of said board of supervisors by the clerk of said county, or to show cause on a certain day in said writ named why the writ should not be made peremptory. In obedience to said writ the county clerk did make and certify and forward to the secretary of state on the 8th day of December a true abstract of the vote of said county, as ascertained by the board of canvassers and entered of record by their direction. The clerk also certified that, after the record had thus been made up, it had been changed so that it then showed that Mr. Wigginton had allotted to him in San Lorenzo precinct 27 votes instead of 29, as found and entered of record by the board of canvassers. This second return was filed in the office of the secretary of state on the 11th of December.

On the 3d day of January, 1877, Mr. Pacheco filed in the supreme court of the State of California a petition for a writ of mandate against the secretary of state, praying that he be required and commanded to certify to the governor the votes given for Representatives in Congress from the fourth Congressional district, and to accept and use, as the returns from Monterey County, the abstract of votes which was first certified to him by the clerk of Monterey County, and filed in his office on the 17th day of November. This petition set forth all the facts, including the two returns above mentioned.

The respondent demurred. The demurrer was overruled, with leave to the respondent to answer. The respondent answered fully, and the case was heard upon petition and answer at the last April term of the supreme court of California. The court consists of five members, three of whom, Chief Justice Wallace, and Justices Niles and Rhodes, held that a peremptory writ of mandamus should issue, in accordance with the prayer of the petition. The other two members of the court, Justices McKinstry and Crockett, dissented, and filed separate opinions.

Mr. Justice Rhodes, in delivering the opinion of the court, said:

The law does not vest him [the secretary of state] with authority to inquire whether the board of supervisors correctly canvassed the returns from the several precincts, or

whether the record correctly states the result of the canvass, as made or declared, or whether the record was properly made up, nor to investigate any question relating to the proceedings which were had prior to the making of the certified abstract. That document, being in the form prescribed by law, is the only one upon which he is required or authorized to act in his official capacity in estimating the vote of the district; and neither his power nor duty in that regard is enlarged or changed by reason of the fact that there are in his office other papers or certificates for which no provision is made by the election laws.

It is his duty, in comparing and estimating the votes, as provided for by section 1346 of the Political Code, to compare and estimate the votes contained in the certified abstract, dated the 17th day of November, 1876, marked Exhibit A.

Chief Justice Wallace, in his separate opinion, sustaining the conclusion of the majority of the court, said :

The so-called certificate of December 8, being extra-official, has, therefore, no sanctity; its value is precisely that of the certificate or written statement of any other respectable gentleman, who, professing to be personally cognizant of what had transpired when the canvass was made by the board, might have addressed a letter to the secretary of state, assuming to detail events as he remembered them to have happened.

Upon this view there can be no question made before the secretary, nor before us, as to what in this case constitutes the record of the board of supervisors, remaining in the hands of its clerk. The argument which denies to the clerk the power to alter or amend the records in his possession becomes merely abstract, since (the certificate of the 8th of December being out of the case) there is nothing to show that he, in point of fact, assumed to do so.

Upon *quo warranto*, or upon information in the nature of *quo warranto*, upon a contest had, pursuant to the provisions of the statute of the State, or before the House of Representatives of the United States, under its constitutional power to judge of the election and qualifications of its members, this and kindred questions may be examined and correctly determined, for there would be jurisdiction to entertain the inquiry, and, what is of much importance in ascertaining the fact, the power to summon witnesses and enforce the production of testimony, upon notice given to the parties in interest, who might appear in person and by counsel.

The chief justice was, therefore, of the opinion that the only return from the county of Monterey rightfully before the secretary of state was the certified abstract of November 15, which was filed on the 17th of that month, and that the secretary must count the votes for Representatives in Congress only as they appear by that abstract.

Mr. Justice Crockett, dissenting, said:

In such a case, the answer to an application for a mandamus would be that the writ is intended to prevent a failure of justice, and cannot be used to perpetuate a wrong, or to compel the performance of an act the result of which would contravene public policy or violate good morals. In this State the policy of the law, as expressed in the statute, is to confide to the board of supervisors the exclusive authority to canvass the election-returns of a county and to declare the result, and its action in the premises, when in due form and free from fraud, is absolutely conclusive on all persons whomsoever, except in the case of a contested election. We are asked in this case to compel the secretary of state, by a peremptory writ, to estimate and count the vote in accordance with a certificate of the clerk, which, as appears on the face of the petition, states a result not only not declared by the board, but essentially different from that which was declared, and which was duly transcribed into the record. To award the writ under these circumstances would be to contravene the plain policy of the law, which confides to the board the exclusive authority to declare the result of an election, and which has not intrusted to the clerk any supervisory power over the board in correcting its mistakes or otherwise. Nor is it material to inquire whether the board in fact committed the mistake imputed to it, and whether the record, as changed by the clerk, states the true result of the election.

Having no authority to declare the result or to correct any mistakes of the board, the attempt of the clerk to do so was simply a nullity; and to award the writ as prayed for would be virtually to decide that the result, as declared by the clerk, was valid and obligatory, notwithstanding the statute explicitly provides that the authority to canvass the returns and declare the result is confided exclusively to the board. If a practice of that kind were tolerated it would necessarily involve an inquiry whether the result as declared by the board, or that declared by the clerk, was the true result of the election; and that, too, though it is conceded on all sides that the clerk has no authority in the premises. In determining whether the writ ought to issue it is our duty to uphold the plain policy of the law, which provides that the result, as declared

by the board, shall be absolutely conclusive, except in the case of a contested election. To issue the writ as prayed for would be to contravene this policy by compelling the secretary of state to accept and act upon a certificate of the clerk which does not state the result as declared by the board, but a different result declared by the clerk. For these reasons I am of opinion that the writ should be denied.

Mr. Justice McKinstry, in his dissenting opinion, said:

As the case is now presented, it must be assumed that the averments of the answer are true. What, then, is the record?

: It would seem the answer must be that it consists of the original entries in the minute-book, that which stood there when the task of entering the statement, which the statute requires the clerk to enter "as soon as the result is declared," was completed.

It would perhaps be difficult in some cases to determine when the record was completed. Having written a statement, the clerk would be competent at the same sitting, and probably within a reasonable time afterward, to correct an error or to amend an imperfect statement, so as to make it accord with the actual declaration of the board, and a court would not seize upon a merely temporary suspension from his labor and hold such to be a final cessation. Perhaps no definite period of time could be fixed which would of itself establish that the work was finished, but all changes must be made by the clerk while his clerical task of entering the declaration of the board is *in fieri*.

I cannot believe that when his task of entering the declaration of the board had been finished, and after a lapse of time, however inconsiderable, the clerk can initiate an independent inquiry, not in respect to what the supervisors declared when they canvassed the vote, but avowedly in respect to what *they ought to have declared*, and then alter the minutes which contain the real declaration, so that they shall accord with his own notions of a correct declaration of the vote. After such alterations the writing would not constitute a record of the proceedings of the board, but of the judgment of the clerk. The clerk has no power to transmit to the secretary any other paper than a copy of the proceedings of the board. The statute does not make the clerk a canvasser. He is the mere scribe, whose office is performed when he makes record of the determination of the board and transmits a copy of such record to the secretary of state. If the allegations of the answer are correct, the clerk did not confine himself to his proper duties, but assumed to discharge those imposed by law upon the board of supervisors, and that, too, after they had performed those duties, thus arrogating the power to reverse the decision of the proper canvassing-officers.

It will be seen that the decision of the majority of the court, while it directs the secretary of state, a mere ministerial officer without judicial discretion, to count only the first return, yet the opinion expressly recognizes the right and duty of the House of Representatives, under its constitutional power to judge of the election, returns, and qualifications of its own members, to examine and correctly determine this and kindred questions. Hence the House is not embarrassed in the least by the decision of the supreme court of California in this case.

But since the decision of the supreme court may be cited to sustain the validity of the first return made by the clerk of Monterey County, in the absence of other evidence than that contained in the records of the courts in the mandamus cases, the undersigned respectfully submit that the opinions of the dissenting justices correctly set forth the rule of law which should govern in the premises. And this view is strengthened by a recent decision of the supreme court of the State of Missouri in a similar case.* The Missouri court unanimously held, in the application for mandamus of the sitting member of this House from the third district of that State (Mr. Metcalfe), that it is the duty of the court, in proceedings for mandamus, to determine for the canvassing-officer what the true return is; and having ascertained what was the true return, the court would command the ministerial officer to count the vote accordingly. There were two returns before the secretary of state of California from the county of Monterey. Both these returns were signed by the same clerk, under the same seal of office. The first return

*The State, *ex rel.* Metcalfe *vs.* Garesche *et al.*, reported in Saint Louis Republican of October 31, 1877.

was forwarded by the clerk of his own volition; the other in response to an alternative writ of mandamus issuing out of a court of competent jurisdiction. Applying the rule laid down by the Missouri supreme court it would have been the duty of the California court to determine which of the two returns truly set forth the result of the vote as ascertained by the board of supervisors of Monterey County. There could have been but one opinion as to what the result was, as ascertained and declared by the board of canvassers. The board was alone authorized by law to canvass the votes, and the clerk had no part of this duty to perform, except to record the result as ascertained by the board. (See *Bell vs. Pike*, 53 N. H. Reps.; 473; *Hill vs. Goodwin*, 56 N. H. Reps., 441.)

The case of *Hill vs. Goodwin* is an important one, and the opinion therein fully sustains the position of the undersigned in this case. It was urged by counsel for Mr. Pacheco in the argument before the committee that the record of the proceedings in the mandamus cases could not be used as evidence in the contested-election case between the contestant and the sitting member. It is true that such records cannot be used to prove or to discredit any material fact in the present issue. But they may be used to show that either of the parties made admissions or swore to statements, in such proceedings, which preclude them in this contest. Mr. Pacheco, in his application for a writ of mandate, set forth, as a part of his petition, an affidavit of the clerk of Monterey County, in order that all the facts in the case might come before the court. This affidavit explains fully the manner in which the vote of the county was canvassed, and the change which the clerk afterward made. After the canvass was completed the board adjourned *sine die*. The affidavit then proceeds to state what subsequently occurred, as follows:

At the time the board adjourned, as aforesaid, the vote stood on the tabulated statement kept by the said clerk at San Lorenzo precinct, P. D. Wigginton, 29, and for the said P. D. Wigginton in the county, 988; that about one hour after the adjournment of said board, and before the pencil-minutes and tabulated statement kept by the clerk had been transcribed to the minutes of said board, Mr. St. John, a member of said board, returned to the office and stated to me that he thought a mistake had been made in the vote for Congressman; that Mr. Scott and Mr. Carter only had 986 votes for Mr. Wigginton. We looked over the figures which I had made and found that they had been added correctly. I then gave to Mr. St. John a copy of my figures of the vote for Congressman, and suggested to him that he compare the same with the figures of the vote as the same had been kept by Mr. Scott, and said that he would in that way find out where or in which precinct the difference was, and if there was a mistake we would correct it in the morning.

After supper that night I wrote up the minutes and transcribed the statement made in pencil to the minute-book. On the morning of November 14, Mr. J. W. Leigh and myself were in the clerk's office, Mr. St. John came in and stated to me that the difference in the figures was in San Lorenzo precinct. I got the tally-list from San Lorenzo precinct and Mr. St. John, Mr. Leigh, and myself examined the same. We found that Mr. Wigginton had only received 27 votes, whereas the tabulated statement and the minutes, as they stood then, had allotted to Mr. Wigginton 29 votes in said precinct. The tally-list was in all respects regular. The 27 was in marks in figures twice and written twice.

We all three felt fully convinced that Mr. Wigginton had received in the precinct only 27 votes, and the clerk had made a mistake in putting down 29. I then and there changed the vote as entered on the minutes from 29 to 27, and the total vote from 988 to 986, and thereafter and on the same day the chairman of said board signed the minutes.

This statement is not merely the affidavit of the clerk. It is embodied in the petition of Mr. Pacheco, signed by him, and verified by his own oath. Hence, so far as this contest is concerned, we may assume the truth of the facts above stated. These facts show that the result as certified by the clerk was not the result ascertained and declared by

the board of canvassers. The persons named in the above statement, Messrs. Scott, Carter, and Leigh, were not members of the board of canvassers, and the canvass made by the clerk and Mr. St. John was without the semblance of law, and proves only the fraudulent conduct of the clerk in the premises. The statement of the clerk that "we all three felt fully convinced that Mr. Wigginton had received only 27 votes" in San Lorenzo precinct does not avail anything. The canvassing-board had, under their official oaths, ascertained the result to be otherwise. And the majority of the board, Messrs. Gordon and Blankenship, afterwards made oath that the alteration by the clerk was made without authority of law or knowledge of the board, and after the board had adjourned; that the board had ascertained, in truth and in fact, that Mr. Wigginton had received 29 votes in said precinct instead of 27, and so declared, and that the returns made by the clerk were false and untrue. The affidavits of Gordon and Blankenship are not cited to prove the truth of their canvass. The result ascertained by the board imports absolute verity, and cannot be impeached except by evidence taken in a contest under the statute.

The undersigned is therefore of the opinion that in Monterey County the contestant is entitled to have counted for him 988 votes, as ascertained and declared by the board of canvassers of said county.

In reference to the votes of Pratt and Methvin, the undersigned is of the opinion that the former was a non-resident of the precinct, and that he voted for the testee, and that Methvin was a non-resident of the State, and that he voted for the contestant. But as these voters would not change the result it is not necessary that their cases should be further considered.

WILLIAM M. SPRINGER.

Mr. WAIT, from the Committee of Elections, submitted the following as the

VIEWS OF THE MINORITY.

The grounds upon which the contestant claims the seat in this case being fully stated in the report of the majority, it is unnecessary to repeat them here.

And the majority having reported that the vote as certified to the secretary of state from Monterey County shall in this case be counted as certified, viz, for Pacheco, 1,208, and for Wigginton, 986, we fully concur with the majority in that regard, and will not, therefore, further notice that branch of the case.

All that is left for consideration is as to the matter of illegal votes cast for these parties respectively, and in order that the House may have the case, as it now stands, conveniently before it, we state that by the returns of the election the vote of the district stands as follows:

For Pacheco	19, 104
For Wigginton.....	19, 103
Majority for Pacheco.....	1

The majority of the committee report that the following-named persons voted illegally for Pacheco: F. W. Hoffman, F. W. Kelly, Pedro Paris, I. Dieos Ortigas, Charles Waterman, Moses Atkinson, T. B. Lanhardt,

James Qualls, Juan Paris, Pedro Ortigas, Charles Gilbert, I. C. Scott, and consequently that this number of votes shall be deducted from Pacheco's vote above stated. We cannot concur with the majority so far as the following are concerned, viz: Charles Watterman, Moses Atkinson, Charles Gilbert, I. C. Scott.

These four, who are by the majority decided to be illegal voters, we insist are not shown to have been such, and, therefore, their votes should not now be rejected. We therefore proceed to present the facts as to each.

CHARLES WATTERMAN.

The evidence touching this voter is as follows (page 33):

ROBERT S. JENKINS, being called as a witness for contestant, was sworn, and testified as follows:

Direct examination:

Question. What is your name, age, and place of residence?—Answer. Robert S. Jenkins; fifty-seven years; Mayfield, Santa Clara County.

Q. How long have you resided in Mayfield?—A. Five or six years.

Q. Do you know a man by the name of Charles Watterman who formerly resided in or near Mayfield?—A. I do.

Q. Did he vote at the election in Mayfield on the 7th day of November, 1876?—A. He did.

Q. How do you know?—A. I was present at the time that he voted. I challenged him, on the ground that he was a non-resident of the county.

Q. State anything you may know pertinent to the inquiry as to Charles Watterman's residence at the time of said election, and for the twelve months next preceding.—A. He had resided here for a number of years; had left this place, sold his interest here, and went to Oregon. He came here the morning of the election, after being absent, as high as I can remember, six or eight months. He came to the polls and was challenged by me. He swore his vote in, and left that same day on the train. He has been here twice since.

Q. Do you know where he was living on the 7th day of November, and, if so, how long had he been living there?—A. From conversation with him he had been to Oregon and other places, and came back here to vote.

Q. Do you know whether he voted for Congressman at that election; if so, for whom?—A. He took the Republican ticket and voted it entire. I can't say whether he altered it or not.

Q. Did you ever hear him say which ticket he voted that day, and whether he voted for Wigginton or Pacheco?—A. He told me in conversation that he voted the Republican ticket.

Q. Did you on that day see the Republican tickets that were being used for voters?—A. I did.

Q. Whose name was on that ticket for Congressman?—A. Romualdo Pacheco.

Q. Whose name was on the Democratic ticket for Congressman?—A. P. D. Wigginton.

Cross-examination:

Q. What is your business?—A. I am a saloon keeper in Mayfield.

Q. For how long a time have you been so?—A. Two or three years.

Q. What are your politics, and how did you vote at the election on the 7th of November last?—A. Voted the full Democratic ticket, including Wigginton for Congress.

Q. How long have you known Charles Watterman?—A. Five or six years certainly; may be longer.

Q. Was he a single man?—A. Yes.

Q. When you speak of his selling his interest here, what do you mean?—A. He sold his interest in the hotel business; said the people of Mayfield might go to thunder. He wanted nothing more to do with them, and left here. That is as near as I can remember.

Q. Was he on the great register when he left?—A. He was.

Q. Do you know where he went, and in what business engaged?—A. He took a contract to go with a circus, and did go through this State and in Oregon, as he told me.

Q. Did he come back to Mayfield?—A. No, sir; he never came back until the day of election.

Q. Will you swear that Charles Watterman was not in Mayfield two or three months before the election, and that he was not here one whole week immediately preceding

the election?—A. To the best of my knowledge, he was not here until the day of election.

Q. Do you know what his post-office address was during his absence?—A. I do not.

Q. Was his name, at any time after leaving Mayfield, canceled on the great register?—A. Not that I know of.

Q. Do you know of his having voted, or of his having his name on the great register of any other county than this one?—A. I knew of it one year before. His name was on the great register in San Mateo County. He was transferred to the register of this county the year before, when he received the Republican nomination for road-master, and told me he had always voted in San Mateo County, and only because he was nominated, and five or six months afterward entered into the hotel business at Mayfield.

Q. Do you know whether, after selling out the interest in the hotel, he had any permanent residence other than Mayfield?—A. I don't know; he said he left this town for good.

Q. Do you swear that that is the exact language he used?—A. As near as I can remember.

Q. Who was present when this conversation took place?—A. Can't say who.

Q. Will you say that any one was present?—A. Yes, sir; a number were present.

Q. And you can't remember the name of any one?—A. No.

Q. Did you make any note or memorandum of it?—A. Not at that time.

Q. Did you at any time?—A. I did within three or four weeks ago.

Q. Was that in contemplation of this contest?—A. No, sir.

Q. Have you any ill-feeling or prejudice against Mr. Watterman?—A. No, sir; I threatened to have him arrested for false voting.

Q. How long was it before the election that the conversation above related, as to his leaving, took place?—A. It must be more than four or five months before the election. I believe he left here in January, and never returned until day of election, as far as I know.

Q. When was your memory refreshed in regard to this conversation?—A. On election day particularly.

Q. Have you spoken much about it to others?—A. Nothing more than to others when I said the election had been carried by fraud, by importing five or six men.

Q. Did you challenge his vote on election-day?—A. I did.

Q. Was he sworn to answer questions?—A. He was sworn.

Q. Was he asked the question as to where his residence was at that time?—A. I think he was, but don't remember.

Q. If you don't remember these important facts, how do you remember so minutely the conversation with Watterman as to his leaving, which took place some ten months before the election?—A. The way I remember it so particularly is this: they, the people, told me that if I challenged him I would get a thrashing, as he was a very muscular, smart man. I said it didn't matter what or who he is, I will challenge him and be prepared for him. I challenged his vote; he turned to me and asked if I challenged him; I said yes; he turned and swore his vote in, and it was received by decision of a majority of the judges; whether they all voted for it I don't know.

Q. Was the challenge submitted to the board of election?—A. It was.

Q. Was it voted upon by them?—A. It was; and they received the vote.

[Respondent here moves to strike out all that portion of the above and foregoing testimony relative to the residence of Charles Watterman, upon the ground that when his vote was opened the same was challenged on the ground of his being a non-resident; that said Watterman was sworn to answer questions concerning his residence; the said challenge was submitted to the board of election, voted upon by them, the challenge denied, and vote of said Watterman received; that the action of said board in determining the right of said Watterman to vote, and his residence, was final and conclusive; and that the question of his residence cannot now be inquired into, the challenge not having been upon any other grounds.]

Q. Will you swear that when Watterman voted he voted for Pacheco for Congressman, and that that name was not scratched?—A. I can't swear to that.

Q. Will you swear that he did not vote for Wigginton for Congress?—A. I won't swear that he did or did not.

CHARLES DUCKER, witness (p. 39):

Question. How long have you lived in Santa Clara County, at Mayfield?—Answer. About seven years.

Q. Do you know a person named Charles Watterman, formerly a resident of Mayfield?—A. Yes, sir.

Q. Where were you on the 7th day of November, 1876, during the general election on that day?—A. I was here in Mayfield.

Q. Did Charles Watterman vote at that election, and where?—A. Yes, sir; in Mayfield.

Q. How do you know the fact of his voting?—A. I saw him put in the ballot.

Q. State anything that you know relative to the place of residence of Watterman at the time of that election, and for a year before.—A. I couldn't state much about his residence the year before. He was living in Mayfield until some time in the spring of the year 1876. Somewhere in March or April he told me he was going to San Francisco. He was up here at that time buying some harnesses and horses to start out with Montgomery Queen's circus. That is the last I see of him in Mayfield until the day of election.

Q. Were you living in Mayfield during the whole of the intervening time?—A. Yes, sir.

Q. How long did Watterman stay here after the day of election?

(Respondent objects to the question as irrelevant and immaterial.)

A. He went away the day of election.

Q. Do you know where he went?—A. I do not. He went on the afternoon train north.

Q. Do you know where he was living on the 7th day of last November; if so, how long had he been living there?—A. He was here on that day.

Q. Did you have any conversation with him as to where he lived?—A. No, sir.

Q. Do you know whether he voted for Congressman at that election; if so, for whom?—A. I do not. I didn't see his ticket. They said he voted for the Republican ticket and Pacheco for Congressman.

(Respondent moves to strike out the latter part of the last and foregoing answer as mere hearsay.)

Q. Do you know whether he took the Republican or Democratic ticket to the polls?

—A. I do not.

Q. Did you ever have any conversation with him about whom he voted for?—A. No, sir.

Q. Do you know whether Mr. Watterman sold out when he left here in March or April, 1876?—A. I do not.

Q. Did he ever tell you he sold out?—A. He did not. I didn't know he had any interest here.

On cross-examination. (p. 41.)

Q. What is your business?—A. Saloon and grocery-store in Mayfield.

Q. How long have you been engaged in that business?—A. Seven years in Mayfield.

Q. Was Charles Watterman a single man?—A. To the best of knowledge he is.

Q. How long have you known him around Mayfield?—A. As long as I have been here; six or seven years.

Q. Do you know of his voting in Mayfield before the last election?—A. Yes; he voted here before this last election.

Q. Do you know of his having voted in any other place than Mayfield since you have known him?—A. I do not.

Q. What has been his business since you have known him?—A. The first I knew of him he kept a livery-stable. He kept teams; hired out teams. One time he kept a hotel. After that I do not know that he ever did anything in Mayfield. He was here.

Q. Did he travel about with Montgomery Queen's circus?—A. So I understood. He told me himself that he was going; he was going to drive a wagon; that he was a wagon-master.

Q. Do you know whether he had his own teams with him?—A. I do not.

Q. Do you know, after his leaving Mayfield, in March or April, of his having voted anywhere else?—A. I do not.

Q. Will you swear that Watterman voted for Pacheco for Congressman?—A. No, sir; I could not swear.

Q. Will you swear that he did not vote for Wigginton?—A. No, sir; I could not swear. He might vote a blank for all I know.

Q. Do you know of Watterman having taken up his residence, after he left Mayfield, in any other place?—A. He claimed Mayfield to be his residence.

J. L. MCKIBBEN, called as a witness by contestant, being sworn, testifies as follows:

By Mr. MALONE:

Question. What is your name, age, and present place of residence?—Answer. J. L. McKibben; age, 40; reside in Mayfield.

Q. Where were you living on the 7th of November last, and what position did you hold in connection with the general election held on that day?—A. Lived at Mayfield precinct. Was one of the judges of election for that precinct.

Q. How long have you resided in Mayfield?—A. I believe about nine years.

Q. Do you know Charles Watterman?—A. Yes, sir.

Q. Were you present and acting as one of the judges in Mayfield precinct during the whole of the day of the 7th of November last?—A. I was.

Q. Did Charles Watterman vote on that day?—A. Yes; to the best of my recollection.

Q. Where was he residing at that time and prior thereto?—A. That is a question I could not answer. He used to live in Mayfield: knew him here for a number of years; about town all the time, three, four, or five years, maybe longer. Has not been here all the time; he had not been here continuously for a year before the election; don't know where he had been.

Q. Was his vote challenged on that day; if so, by whom and on what ground?—A. To the best of my knowledge his vote was challenged. I don't know by whom, there were so many challenged. I can't say positive what the ground of the challenge was, but to the best of my knowledge it was that he had not been a resident of the precinct for thirty days. The challenge was denied.

Q. Can you say if at any time during the year preceding the election, November 7, 1876, Charles Watterman gave up his residence in Mayfield?—A. No, sir; I cannot.

Q. When Atkinson and Watterman were sworn at the time they were challenged, did they swear that they were residents of Mayfield?—A. I think they did, or they would not have been allowed to vote; they might have claimed this as their residence.

Q. How did you vote on those two challenges?—A. I do not recollect whether I voted on those two or not. Two of the judges generally did the voting; the inspector and one of the judges.

Q. Did not you vote on all the challenges that were made?—A. I do not think I did.

J. L. MCKIBBEN.

A. L. LADD was duly sworn and examined by Jno. T. Malone, esq., for the contestant.

(Counsel for the respondent here interposes the same objection made to testimony of Scott, Ducker, and McKibben.)

Question. What is your name, age, and place of residence, and how long have you lived at your present place of residence?—Answer. My name is A. L. Ladd; age, about 36 years; reside in Mayfield, in Santa Clara County; have lived here since 1863.

Q. Do you know Charles Watterman? If so, how long have you known him?—A. I have known him about six years.

Q. Do you know if he ever resided in Mayfield; and, if so, when did he leave Mayfield, and for what place, if you know?—A. Yes, sir; he has. I am not positive, but I think he left on the 15th of January, 1876. The reason I think he went away at that time is that we were partners, and he sold out at that time; he might have gone away the next day. I do not know where he went.

Q. Do you know whether he ever came back to Mayfield to live before the 7th of November, 1876?—A. I did not see him. Not to live, unless you call coming to spend the day coming to live.

Q. How long had you been partners?—A. From about the 1st of October, 1875.

Cross-examination by Mr. WILSON:

Q. What is your business?—A. At the present time I am waiting for business. Have nothing to do.

Q. How long had you known Watterman in Mayfield?—A. I have known him four years sure.

Q. Was he a single man?—A. Yes, sir.

Q. When he left Mayfield in January, 1876, did you hear him express any ill-feeling toward the people of Mayfield?—A. I do not think I spoke to him after I bought him out.

Q. When he left Mayfield, in January, 1876, did you hear him express any ill-feeling toward the people of Mayfield?—A. No; I did not.

Q. Would you have been likely to have heard him if he had so expressed himself?—A. I do not know that I would.

Q. Did you ever see him after the time he left in January in Mayfield before the election?—A. Yes, sir; next time I saw him he was with Queen's circus. He called at the house and took a drink of soda.

Q. Did he go away with the circus?—A. Yes, sir; he started with it.

Q. Do you know whether he gave up his residence in Mayfield when he left in January?—A. No; I do not.

Redirect examination by Mr. MALONE:

Q. Do you know whether he intended to come back to Mayfield when he left?—A. I do not.

A. L. LADD.

This is all of the evidence in regard to this voter, and we submit that the conclusion of the majority as to him cannot properly be sustained. He had resided at Mayfield, where he had voted for several years. He was a single man, and there is not the slightest evidence that he ever had any other residence. In the spring, before the election, he took employment to travel with a circus, and did travel with it during the summer. Came back to Mayfield on the day of the election and voted. His vote was challenged and the challenge was not sustained. There is absolutely nothing to indicate any purpose on his part to change his residence, other than the statement of a witness that he said he left this town "for good" when he went with the circus in the spring. To permit this loose kind of testimony, an attempted repetition of what a person said eighteen months before, to have the effect to disfranchise a voter, and perchance to determine the right to a seat in the House of Representatives, will not do. Such a precedent or rule can only work mischief. Such testimony is considered by courts and authors to be the most unreliable and least worthy of consideration, and for reasons which are too familiar to need to be repeated here. Waterman, as before stated, was challenged as a voter. He was sworn and interrogated touching his right to vote. He knew where his residence was, what his intentions were when he went away with that circus, and upon his sworn statements, coupled with the fact that notoriously he had been a resident there for years, his vote was received. Now, it is proposed by the majority to say that that was an illegal vote, with no other evidence to warrant it than the statement of a witness, made eighteen months after he professed to have heard it, that Waterman said about the time he went away with the circus that he was going "for good."

If this man's vote can be held to be illegal, it will be the declaration of a principle that will practically disfranchise hundreds of men who temporarily leave their homes to follow pursuits requiring them to travel from place to place. Such men habitually go home to vote, especially at Presidential elections. They will travel hundreds of miles to exercise that privilege, and are too honest to vote where they cannot legally do so. This is manifestly one of this class of cases, and there are others like it which appear in this record. William Pratt or G. C. Pratt, whichever the name is, is a case of like character. With all due respect for the majority, we are constrained to say that the statement of the facts of this case made in their report comes far short of warranting the conclusion that he was an illegal voter.

The majority says he "had left Mayfield six or eight months before the election." Suppose he had; is that inconsistent with the fact that Mayfield continued to be his residence? And they say that he said "he had no business there; that he had another situation, and was going to leave; he was absent in another county." That other situation, it appears, was that he went over into the woods to work in a mill. Suppose he did; does that show that he abandoned his residence at Mayfield? The next day after the election he went away. One witness says he told him he was going home, East; another that he said he was going to Iowa. His name was on the great register. His vote was challenged. He was sworn as to his place of residence, and the board decided that he was a competent voter.

We insist that his vote should not be rejected.

CHARLES GILBERT.

The majority report that Charles Gilbert should be rejected as an illegal voter. From this conclusion we dissent. He voted in Poway precinct, and it is claimed that he voted for Pacheco.

We here present the House with all the evidence in regard to this voter.

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FREDERICK REETZKE, being first sworn, testifies :

Question. What is your name, age, occupation, and place of residence ?—Answer. F. Reetzke; age, forty-three; apiarian; Vallecito, Poway precinct, county of San Diego, California.

Q. Do you know Charles Gilbert ?—A. Yes, sir.

Q. State, if you know, what ticket he voted at the last general election held in Poway precinct, November 7, 1876.—A. Gilbert always told me he was a Republican. He asked me which were the Republican tickets. He took one, folded it up, and, to my honest belief, he put it in.

Q. Do you mean that he took a Republican ticket ?—A. Yes, sir.

Q. Did this occur on that election-day ?—A. Undoubtedly.

Q. In what precinct did it occur ?—A. Poway precinct, San Diego, County, California.

Q. Was Romualdo Pacheco's name on the Republican tickets in that precinct as a candidate for Representative in Congress ?—A. It was on the ticket I voted and on the ticket I showed Gilbert.

Q. When Gilbert asked you which were the Republican tickets, did you give him one with the name of Romualdo Pacheco on it, and is that the one which, in your honest opinion, you think he voted ?—A. The two bunches of tickets were lying close to each other on the same desk. I didn't give him one; I only showed him the Republican ticket with Pacheco's name on it; he took it, folded it up, and, to my honest belief, voted it.

Q. State, if you know, where he resided at the time of that election, and where he had been residing for the thirty days immediately preceding that election.—A. At Alvah Mitchell's house.

Q. State, if you know, whether Alvah Mitchell's house was, at the time of said election, in said Poway precinct.—A. It was not.

Cross-examined by Mr. HENDRICK, for respondent :

Q. Can you swear positively that Gilbert voted the Republican ticket, or a ticket with Romualdo Pacheco's name on it ?—A. I was there before Gilbert came; I showed him the ticket with Pacheco's name on it, and he took it, folded it up, and I did not see him take another before he voted.

Q. Are you sure that the name of Pacheco was on the ticket which Gilbert took ?—A. Yes, sir.

Q. Will you swear positively that Pacheco's name was on the ticket that Gilbert voted ?—A. No, sir; I will not swear positively to anything of that kind; but to my honest belief it was.

Q. How do you know that Mitchell's house was not in the Poway precinct ?—A. The township line divides the precincts, and I know where the township line runs. I saw it surveyed.

Q. What precinct had Alvah Mitchell been in the habit of voting in previously ?—A. Poway.

Re-direct by Mr. LEACH :

Q. State whether or not you were present on that election-day when Mr. Alvah Mitchell offered to vote in that precinct.—A. I was present when he offered his vote.

Q. State whether his vote was accepted or refused by the election board of that precinct.—A. I know they refused it, although I did not hear them. The board knew that Gilbert gained his residence under Mitchell's roof.

FRED. REETZKE.

Subscribed and sworn to before me this 19th day of July, 1877.

WILL J. HUNSAKER,
Notary Public.

JAMES ANDERSON, being first duly sworn, testifies :

Question. What is your name, age, occupation, and place of residence ?—Answer. My name is James Anderson; my age is fifty-four; justice of the peace; Poway, San Diego County, California.

Q. Were you a member of the election-board of Poway precinct at the general election held November 7, 1876 ?—A. I was clerk.

Q. State, if you know, where Charles Gilbert resided at the time of that election, and for thirty days immediately prior thereto.—A. He resided at the house of Alvah

Mitchell, but was occasionally in the Vallecitos, about four miles east of Mitchell's, staying with Mitchell and Reetzke.

Q. State, if you know, whether the house and home of Alvah Mitchell, to which you have referred, was in said Poway precinct at the time of said election or not.—A. I know nothing further than that it was ruled by the election-board of Poway precinct that it was not in the precinct.

Q. State, if you know, whether the vote of said Alvah Mitchell was refused by that election-board on that election-day; and, if so, for what cause?—A. I saw the vote refused, for the reason assigned by the board, that Alvah Mitchell did not live in the precinct of Poway.

Q. State, if you know, what were Mr. Alvah Mitchell's politics.—A. Democratic.

Q. What are your politics?—A. I, sir, am a decided Democrat.

Cross-examined by Mr. HENDRICK, for respondent:

Q. Are you an old resident of Poway precinct?—A. Nearly sixteen years I have resided in Poway precinct.

Q. About how far from the precinct line is Mitchell's house situated?—A. I cannot say how far; we never questioned his right, because in the country a mile or two never barred a man from voting under the former rule. The board was not furnished with scales to determine where each man's house was situated.

Q. Does the precinct map show whether Mitchell's house is in the Poway precinct or not?—A. I do not know.

Q. Can you swear positively that no portion of Mitchell's house or improvements were in Poway precinct?—A. If you will refer to my testimony you will find that I stated that I did not know where the line was; in direct answer, I will state that I do not know.

Q. Had Mitchell ever voted in the Poway precinct before?—A. Yes, sir; as Poway precinct was at the time he voted. They have been modifying the precincts lately.
JAMES ANDERSON.

Subscribed and sworn to before me this July 19, 1877.

[SEAL.]

WILL J. HUNSAKER,

Notary Public.

Now, we submit that this is not sufficient to prove non-residence, True, Mr. Mitchell's house was not in the precinct. But this is not sufficient to prove residence at Mitchell's house. The rule of law on this subject is this:

Nor has the mere statement by a witness that a voter was or was not a resident, without giving facts to justify his opinion, been considered sufficient to throw out such a vote. The testimony shows a number of instances where a witness would state positively the residence or non-residence of a voter on some theory of his own, or some mistake of fact, when other testimony would show with entire clearness that the vote was legal.

What constitutes a legal residence is generally imperfectly understood by witnesses. It is not sufficient for a witness to say that a man resides in this or that place, but facts should be given to show that the place named was the actual legal residence. It is very easy for witnesses to mistake the place where a man may be staying temporarily for his actual residence; or, in other words, to speak of the place where he may be temporarily at work as his residence, his home, or where he lives. This kind of evidence is not and never should be regarded as sufficient to prove a man an illegal voter, and hence we contend that this evidence is wholly insufficient to prove Gilbert to have been an illegal voter.

Again, this evidence does not prove that Gilbert voted for Pacheco. The substance of the evidence is that he associated with Mitchell, a Democrat; that he took a Republican ticket and folded it up, and the witness says he honestly believes he voted, although no witness testifies that he did vote.

The logic of the majority on this subject, in respect of this vote, is, to say the least, singular. There is an evident feeling that the proof is weak and needs propping to make it stand, and this singular argument

is presented: "The contestant could not prove how the voter voted any better, except by calling him as a witness; but if he called him as a witness, he was not bound to testify for whom he cast his vote; if he could not be compelled to answer, he need not be called." Then the majority proceed to say: "But Mr. Pacheco might have called the voter, and if he did not claim his privilege, he could have made it clear for whom he did vote." And not having called him, the inference is drawn that Gilbert would have corroborated the witness whose deposition is in the record. It is unnecessary to comment on this. It is quite as fair to infer that, from the fact that contestant did not call Gilbert, he knew that Gilbert would not corroborate the other testimony as to residence or voting, and it is certainly quite as incumbent on the contestant to produce the voter as a witness as upon the contestee; more so, indeed, for on the contestant rests the *onus*.

Hence we say that there should not be deducted from Pacheco a vote on account of Charles Gilbert.

MOSES ATKINSON.

The majority pronounce Moses Atkinson to have voted illegally for Pacheco. From this we dissent, and here present to the House the evidence that relates to him.

Evidence of Jenkins, p. 34:

Q. State anything you know about the residence of Moses A. Atkinson, on and before the election in last November. State, also, if you know, whether he voted at that election for Congressman; and, if so, for whom?—A. He was a resident of San Mateo County for the last one or two years before the election. He rented land and lived there. He voted. I think I challenged his vote. He voted the whole Republican ticket from stem to stern. He has always said so.

Q. State anything you know about the residence of Joseph Dickenson on and before the 7th of last November, and also if he voted at said election; if so, what ticket?—A. He left here about eight months before the election and went to Soledad, in Monterey County; resided there eight months. He came back to San José about two weeks before the election. He came here about a week before the election, and voted the Republican ticket, saying at the same time that Tilden would be elected.

Q. Do you mean to say that Moses Atkinson was at no time a resident of this county?—A. He was a resident in this county three or four years ago (p. 37.)

Q. Where did he go to?—A. San Mateo.

Q. What is his business?—A. He is a hay-presser and farmer.

Q. From the time he left this country, three or four years ago, has he never returned to Mayfield?—A. He has been here to work; that's all.

Q. How do you know that he did not make his home in this county?—A. Because he was living in San Mateo County.

Q. Is he a single man?—A. Yes, sir.

Q. Where was he living in San Mateo?—A. He was farming in San Mateo County, and his house was just on the other side of the creek, which is the boundary-line between the two counties.

Q. How long was he farming there?—A. Two or three years; he was a renter. No part of the farm is in Santa Clara County.

Q. Who owned the land?—A. Jeremiah Clark.

Q. When was the last time Atkinson was in this county before the election?—A. He comes here trading most every day.

Q. Will you swear that he was not residing in this precinct thirty days before the election?—A. I swear that he was not residing in this county within thirty days before the election in November last.

Q. Was he renting land of Jeremiah Clark in the months of October and November, 1873?—A. He was.

Q. How did you know that?—A. He told me so himself; that he had leased the land for two or three years.

Q. Do you know whether, in the months of October and November, 1876, he was renting or farming in Santa Clara County?—A. He was not.

Q. Did he rent any of Clark's land that was in Santa Clara County?—A. Not that I know of.

Q. On what ground did you challenge his vote?—A. On the ground of non-residence in the county.

Q. Was his name on the great register?—A. I suppose it was.

Q. When he was challenged, was he sworn to answer questions as to residence?—A. He was, of course.

Q. Was the challenge put to the board of elections?—A. It was, and they decided to receive it, and he voted.

As to Moses Atkinson, Charles Ducker testifies, on p. 41:

Q. State, if anything, what you know about the residence of Moses Atkinson on and before the election in last November, and if you know whether he voted in Mayfield at that election for Congressman; and, if so, for whom?—A. He lived over across the creek, in San Mateo County. Must have lived there all of two and a half years before the election. He voted at the election in Mayfield. I could not tell whether he voted for Congressman or not. I did not see his ticket. I challenged Atkinson. He said he voted the Republican ticket all the time.

Q. Did you see the Republican ticket used at that election; if so, whose name was upon it?—A. Yes, sir; Pacheco.

Q. Do you know what occupation Atkinson followed at and prior to that time? If so, state.—A. Farmer; also he used to go out hay-baling.

Q. Where did he farm?—A. In San Mateo County.

Q. Will you swear that Moses Atkinson was residing in San Mateo County in the months of September, October, and November, 1876?—A. He was at his ranch there, but he left about the time of election; he was down baling hay in this county.

Q. How long was he baling hay here in this county before election?—A. I don't know; he might have been here three or four weeks; may be longer.

Q. Do you know whether he still retained his interest in the ranch in San Mateo County?—A. Not to certainty; I believe so; yes, he had his interest at that time.

Q. How do you know?—A. On the night of election he told me so. Told me he lived on the ranch, but he claimed his residence in Mayfield, because he slept more in Mayfield than on the ranch.

Q. Where did he sleep in Mayfield?—A. At the hotel, he told me.

Q. Do you know of his keeping his horses here in Mayfield?—A. No, sir; he kept them on the ranch.

Q. Are you sure you challenged Moses Atkinson?—A. Yes, sir.

Q. Mr. Jenkins did not challenge him, did he?—A. No, sir.

Q. On what ground was he challenged by you?—A. That he was not a resident of this county.

Q. Was he sworn to answer questions concerning his residence?—A. I could not swear positively whether he was or not.

Q. Do you think he was sworn?—A. I could not tell without reflection.

Q. Was the challenge submitted to the board of election?—A. It was.

Q. What was their decision?—A. The challenge was denied, and his vote was received.

(Respondent moves to strike out all of the above and foregoing testimony of Charles Ducker relative to the residence of Moses Atkinson, on the ground that the decision of the board in denying the challenge and the receiving of the vote was final and conclusive as to the residence of Moses Atkinson, the challenge having been made upon the sole ground of non-residence, and no allegation of fraud on the part of the board having been made.)

Q. Will you swear that Moses Atkinson voted for Pacheco for Congressman on the 7th of November last?—A. No.

Q. Will you swear that Atkinson did not vote for Wigginton for Congressman?—A. No, sir.

Redirect examination:

Q. You stated, in answer to a question in cross-examination, that you could not swear positively that Moses Atkinson was sworn to answer questions by the board of election. Why do you doubt that he was?—A. Just that it comes into my mind that the judges decided the matter without his being sworn.

As to this voter, E. C. Scott testifies as follows, pp. 43, 44, 45:

By Mr. MALONE:

Question. What is your name, age, and place of residence?—Answer. E. C. Scott; age, 33; residence, San Mateo County.

Q. Do you know a man by the name of Moses A. Atkinson? If so, how long have you known him?—A. I do; have known him three or four years, perhaps longer.

Q. State, if you know, where he resided at and prior to the 7th of November, 1876,

and how long he had resided at his then place of residence; what his occupation was, and whether he voted for Congressman at the general election held on that day; and where, if you know.—A. His home was in San Mateo County; there is where his land was, and where he generally made it his home. He was a renter; his land was about two miles from Mayfield, across the creek; the creek is the boundary-line between San Mateo and Santa Clara Counties. He had been living there two years, I think, that I know of. He told me he voted; he didn't tell me particularly for who. I think he said he voted in Mayfield. He did not tell me what ticket he voted; his occupation is what I call farmer; he goes about baling hay.

Q. Do you know anything else pertinent to the matter of Mr. Atkinson's qualifications to vote in Santa Clara County on the 7th of November, 1876?—A. I do not.

Cross-examination:

Q. What is your business?—A. Farmer.

Q. How far do you live from Atkinson?—A. Not over a mile and a half, I think.

Q. Is Atkinson a single man?—A. Yes, sir.

Q. Who lived on the farm with him?—A. During 1876 he had leased his farm to his brother and another person for a portion of the crop. He told me he had rented a part of it to his brother and a part of it to Mr. Poole. Did not tell me whether he had rented the whole of it or not.

Q. Who put in the crops of 1875 and 1876?—A. His brother and Mr. Poole.

Q. Was Atkinson living there then?—A. A portion of the time he would be there. He worked awhile here in Santa Clara County in the spring of 1876, after leasing the place to his brother, with Mr. Coutts, teaming.

Q. How long was he teaming for Mr. Coutts?—A. I do not know; it might have been a month, or thereabouts.

Q. Then where did he work?—A. Then he worked awhile on the Mount Hamilton road, in this county—about a month, or perhaps longer. Then he was back on the ranch in San Mateo County, and has been there ever since, to the best of my knowledge, except when he was around baling hay. He was out baling in each of the counties whenever he could get work.

Q. Who was living on the ranch after he leased it to his brother and Mr. Poole?—A. His brother and his brother's family lived there. Mr. Poole's family was not there.

Q. After Atkinson returned to the ranch, in the fall of 1876, how often did you see him between that time and the election?—A. I could not say; I might have seen him a half a dozen or a dozen times. I did not take any note of it.

Q. What was he doing there?—A. He was just stopping there. There was nothing much to do there during that season of the year.

Q. Do you know that he was not in Mayfield, engaged in the business of teaming, in the months of September, October, and November, 1876?—A. I do not know that he was.

Q. Do you know that he was not?—A. I do not.

Q. Do you know where he claimed his residence?—A. I do not know as I ever heard him say where he did claim his residence.

Q. After he had leased the farm to his brother, did he have anything to do with the management of it?—A. Not that I know of.

Q. Do you know of his having horses and wagons?—A. He had some horses and wagons.

Q. Do you know whether he left the horses and wagons on the ranch after he leased it to his brother?—A. No; I can't say that he did. I do not know where he kept them.

Q. Were you in Mayfield very often?—A. Not very often. I was in once or twice a week.

Q. During the fall of 1876, preceding the election, when you came to Mayfield, did you ever see Atkinson?—A. Yes, sir.

Q. What was he then doing?—A. I can't say, in the fall. He had a barn here. I think I saw him and his horses there in the fall or late in the summer. I believe he bought the lot and put up the barn to keep his horses when he would have any work to do here in town.

Q. When was this, in reference to the day of election?—A. It was a long time before; about three months, or two months.

Q. Was he living in Mayfield then?—A. I think he was; I think he was working here or had been working here.

Q. How long did he live here in Mayfield at that time?—A. I can't say.

Q. Can you say whether he did not live in Mayfield from the time you saw him in Mayfield with his horses, in the latter part of the summer or early part of the fall, until election day?—A. I can't say positively, but I do not think he did. He might have lived here in Mayfield two or three months before the election and I not have known anything about it; being a single man, he might have called this his home.

Q. Do you know of his having voted in San Mateo County, ever?—A. I am not sure, but I think he voted at Menlo Park, in San Mateo County, once a year ago; some of the county elections there.

Q. Do you know of his being transferred from that county to this?—A. I do not know; I know his name is on the great register of this county.

Q. What are your politics?—A. Democratic. Voted for the Democratic ticket at last election.

E. C. SCOTT.

This is all the evidence as to Atkinson.

This voter had lived in Mayfield; there is no kind of doubt about that. A year or two before the election he had rented a ranch just outside Santa Clara County, and about two miles from the place where he voted. He was a farmer and hay-presser. He was almost every day in Mayfield, where he had certainly been a resident, and where he claimed his residence to be. The majority quote paragraph 5, section 1239 of the statute :

5. A person must not be considered to have gained a residence in any precinct into which he comes for temporary purposes merely, without the intention of making such precinct his home.

There is no evidence that this voter came into this precinct for temporary purposes. If it proves anything, it proves that he went out of the precinct for temporary purposes, and that under the law does not lose him his residence; and although he was farming outside the precinct he claimed the precinct to be his place of residence. He was evidently well known. His vote was challenged on the ground of non-residence, but was admitted.

As to this voter, the majority of the committee have evidently overlooked the testimony of E. C. Scott. He testifies that in 1875 and 1876 Atkinson had leased to his brother the farm that lay outside the county. This witness testifies :

Q. After he leased the farm to his brother did he have anything to do with the management of it?—A. Not that I know of.

Q. Do you know of his having horses and wagons?—A. He had some horses and wagons.

Q. Do you know whether he left the horses and wagons on the ranch after he leased it to his brother?—A. No; I can't say that he did. I do not know where he kept them.

Q. Were you in Mayfield very often?—A. Not very often; I was in once or twice a week.

Q. During the fall of 1876, preceding the election, when you came to Mayfield, did you ever see Atkinson?—A. Yes, sir.

Q. What was he then doing?—A. I can't say, in the fall. He had a barn here; I think I saw him and his horses there in the fall or late in the summer; I believe he bought the lot and put up the barn to keep his horses when he would have any work to do here in town.

Q. When was this, in reference to the day of election?—A. It was a long time before—about three months or two months.

Q. Was he living in Mayfield then?—A. I think he was; I think he was working here, or had been working here.

Q. How long did he live here in Mayfield at that time?—A. I can't say.

He had a barn and kept his horses in the precinct where he voted. It seems to us that this evidence is wholly insufficient to prove Atkinson an illegal voter.

JOSEPH A. SCOTT.

This man is also alleged to have voted illegally for Pacheco.

William Granger testifies (p. 72) :

Q. Were you present at the said polls at the last November election when one J. A. Scott offered his vote?—A. I was, and challenged his vote; there were others that challenged his vote at the same time. I challenged him on the grounds that he was not a legal voter in this precinct; that he had not resided in the precinct thirty days

prior to the election. He swore that, as near as I can now remember, it was not thirty days since he had last come here; that from his first arrival here, coming on business for an oil company, that it was thirty days or over; that he did not know positively that this would be his place of residence, but had intended, although not certain of his intentions, that he would make this his place of residence, as he was subject to orders from the company which he represented.

Q. Did he or not state upon that examination that he did not bring his family until upon his second visit or return to this place?—A. I believe he did.

Q. Who voted him?—A. I cannot at present call the names of those who seemed to control him, but it was the same, or near the same, crowd that was endeavoring to bulldoze the voters that day.

D. C. Scott testifies (pp. 77, 78):

D. C. SCOTT, being first by me duly sworn, deposes and says as follows, to wit:

Question. Do you reside in Ventura precinct, county of Ventura; if so, how long?—Answer. I do, since a year ago last May, 1876.

Q. Do you know J. A. Scott?—A. Yes, sir.

Q. Do you know whether or not his residence was in Ventura precinct for thirty days prior to the 7th of November, 1876?—A. He came here on the 17th day of October, 1876, to make his residence.

Q. State if you know where was J. A. Scott's place of residence immediately before he came to said Ventura precinct.—A. Andrew's Station, or Lyons Station, Los Angeles County, California.

Q. Were you present at the polls of Ventura precinct at the election of the 7th of November last?—A. Yes, sir.

Q. Did J. A. Scott offer to vote at that election?—A. Yes, sir.

Q. Was his vote challenged; if so, upon what grounds?—A. His vote was challenged by several parties; one objection was that he had just been registered, and the other was that they knew when he came here. I remember what was said. He swore his vote in.

(The above question and answer, so far as relates to his offering his vote and challenging his vote, objected to as incompetent.)

Q. Do you know who voted Mr. J. A. Scott?

(Objected to as incompetent and irrelevant and immaterial.)

A. Colonel Heines and W. J. Williams are the only ones I noticed particular.

Q. Were those persons working that day to obtain votes for Mr. Wigginton or Mr. Pacheco for member of Congress?

(Objected to for the same reasons.)

A. For Mr. Pacheco.

Q. Do you know whether Mr. J. A. Scott is a Republican or a Democrat, and what ticket he voted at said election?

(The first part of question objected to for the same reasons.)

A. He is a Republican. I could not swear to the ticket. I did not see it put in.

Cross-examination:

Q. How do you know that Colonel Heines and W. J. Williams were working for Pacheco?—A. I heard them say so themselves; that they were working for the whole ticket, the Republican ticket.

Q. You say that J. A. Scott came here on the 17th day of October, 1876. Did he bring his family here on that day?—A. I don't think he did. I saw his name on the register. If he did not bring them then they came right away after.

Q. When did you see his name on the register?—A. On the 17th day of October, the day he arrived.

Q. Haven't you seen it since?—A. I saw it a few days before the grand jury met. I went there to be sure what day it was.

Q. Is not it a fact that you are swearing by the register?—A. I was there at the hotel the day he arrived. I know it to be the 17th day of October without the register, but I referred to that to make sure.

Q. You are not certain whether he brought his family with him at that time or not, are you?—A. No, sir.

Q. He has been to work here ever since that time, has he not?—A. Yes, sir.

Q. He was here before that time, wasn't he?—A. Yes, sir.

Q. And went back for his family, didn't he?—A. He came here August 26. I had orders from R. C. Page, the manager at that time, not to let him make any oil in Ventura County, and he went back to Lyons Station; he came down again on the 14th day of September, and it was not decided then that he should stay here; he came back again about the 17th of October to go to work; he got here on the 17th.

(All of the above answer that relates to the orders of the company or R. C. Page, in relation to J. A. Scott not being allowed to make any oil, and so forth, is objected to as not responsive to the question.)

Q. How long did he stay when he came here in August ?—A. Three days.

Q. Didn't he apply for leave to go to work ?—A. Yes, sir.

Q. How long did he stay when he came again on September 14 ?—A. About two or three days. I don't remember exactly.

Q. Didn't he again on that occasion seek to go to work ?—A. No, sir. There was a new manager here at that time, and he had not decided then who should come here to refine, and left me in charge of the business here until he could get some refiner. It was not decided by this new manager whether Scott should come here or remain where he was.

Q. Will you swear that Mr. Scott was not at that time trying to get here to refine oil ?—A. He was trying to get to come here, but could not come without orders from the company.

Q. But he was here, wasn't he ?—A. He would ride out here and look around, and go back home again.

* D. C. SCOTT.

Witness waives the reading of the deposition.

J. A. Scott was himself called as a witness, and testified as follows (pp. 136, 137) :

Question. State your name, age, place of residence, and occupation.—Answer. My name is Joseph A. Scott; my age, forty-four; my residence is San Buenaventura; I am refiner of oils, and superintendent of the California Steam Oil Company.

Q. When did you come to San Buenaventura to reside ?—A. I came, with the intention of making this my home, on the 14th of September, 1876.

Q. Has this been your home ever since that time ?—A. I have considered it so ever since that time. I have been backward and forward from the two places which I have in charge; one of them is at Andrews Station, and the other here.

Cross-examination :

Q. In what county is Andrews Station ?—A. In Los Angeles County.

Q. Where was your residence immediately before the 14th of September, 1876 ?—A. It was at Lyons Station.

Q. Is Lyons Station near Andrews Station in Los Angeles County ?—A. Yes, sir; one mile apart.

Q. How long had you been residing there with your family before the 14th of September, 1876 ?—A. I resided with my family three months and six days.

Q. What business were you engaged in at that place ?—A. I was general superintendent of the works of the California Steam Oil Works Company there and here in San Buenaventura. I also treated oils there the same as I do now here.

Q. Have you continued in that employment there and here ever since and up to this time ?—A. I have.

Q. Are you keeping house in San Buenaventura ?—A. I am.

Q. How long have you been housekeeping in this place ?—A. It was early in November, 1876—about the 5th and 10th of November, 1876. I can't say positively what day.

Q. Might it not have been later than the 10th of November, between the 10th and the 15th ?—A. No, sir; I now think that it was on the 3d of November, 1876, that we commenced to keep house. We paid rent from the 1st of November.

Q. Where was your family living up to the 3d of November, 1876 ?—A. They were living part of the time at Lyons Station and part of the time at San Buenaventura.

Q. When did you remove your family from Lyons Station to reside permanently in San Buenaventura ?—A. I first brought my wife and family in the early part of August, 1876, about the 10th, I think; it might have been the 15th; I am not sure about the date. I thought at that time that I might perhaps leave them here and make this my home, but I concluded to return with them for a week or so; then I didn't bring my family again, I think, about the 26th of October, but returned myself, September 14, to secure a house, in order to bring my family.

Q. During all this time, was you engaged as superintendent of the company you mentioned in that business at Andrews Station ?—A. I was superintendent both there and here during this time. I was general superintendent at both places.

Q. Did you board with your family at a public house at Andrews Station, or were you housekeeping while there ?—A. We were boarding at a public house; took our meals at a public house and hired a cottage where we roomed; the cottage was connected and was a part of the hotel where we boarded.

Q. Did you furnish this room yourself, or was it furnished by the hotel-keeper ?—A. The room was furnished by the hotel-keeper, but we used our own linen and bedding.

Q. Did you bring any furniture (household furniture) to this place from your home at Andrews Station, when you removed to this place ?—A. None, to my knowledge. Our household goods were shipped from Los Angeles here by steamer.

Q. Of how many did your family consist at the time you removed to San Buenaventura?—A. My wife and one boy.

Q. How many days, if you can recollect, were you in San Buenaventura with your family after your return here, and next before you went to housekeeping, and what house did you stop at here?—A. Well, we stopped at the Occidental Hotel; think my family arrived October 26, and I arrived with them. I can't remember how long it was before I returned again to Lyons Station.

Redirect:

Q. You say your furniture was shipped direct by steamer from Los Angeles here. Had you been keeping house in Los Angeles, or were your goods unpacked in Los Angeles?—A. I had not been keeping house, nor my goods unpacked. They were just as they were shipped from the East, and as they were laying at the warehouse in Los Angeles.

Q. Prior to you and your family commencing to keep house in this town, on or about the 3d of November, 1876, your wife and boy had been boarding at hotels, both here and at Lyons Station, since they arrived from the East, have they not?—A. We were one month boarding at Los Angeles, at the Saint Charles Hotel, and the balance of the time we boarded at hotels at Lyons Station and here, up to the time of our going to keeping house here.

Q. Were you ever registered as a voter in Los Angeles County?—A. I never was; no, sir.

Q. Were you on the great register in any county but this since you came to this State?—A. None, to my knowledge; no, sir.

J. A. SCOTT.

Deposition of E. A. Edwards.

Question. State your name, age, place of residence, and occupation.—Answer. My name is E. A. Edwards; I am thirty-three years of age; I am a merchant, and reside in San Buenaventura.

Q. Are you acquainted with the previous witness, J. A. Scott?—A. I am.

Q. When did you first become acquainted with him?—A. I think it was the early part of 1876; the winter of 1876.

Q. Where?—A. At Lyons Station.

Q. When did you first see him in this town, or about when?—A. I couldn't tell the month; I think that he was first here the early part of the summer or spring of 1876.

Q. What business was he engaged in, if any, when you first saw him here?—A. He was superintending the refinery of the Star Oil Works Company.

Q. The same company that he is now employed by?—A. The same.

Q. Do you know of his looking for a house, or having any one else looking for a house for him at any time during the summer of 1876? If so, state what you know about it.—A. Some time during the latter part of the summer of 1876—I think it was about the middle of August—he was here with his wife, stopping at the Santa Clara House, and I asked him if the company for whom he worked had concluded to locate in here. He said that it had, and that he would like to have me get him a house.

Q. Do you know anything about the company locating in here, or intending to do so, from anything learned from any member of the company? If so, state what.—A Yes, sir; Mr. Scofield, one of the members, told me that they would put Scott here.

Q. Was there any reason assigned by Mr. Scofield, or any other member of the company, why D. S. Scott should not know that J. A. Scott was to relieve him of the charge of the refinery here?—A. I could not say positively that any member of the company did; all expressions about that emanated from J. A. Scott, and not from any member of the company; I think so.

E. A. EDWARDS.

Here we have presented to the House all of the evidence in regard to J. A. Scott. He was on the great register; he himself should know better than any one else where his residence was. The evidence is not sufficient to show that he was not a legal voter; and, besides this, the evidence does not show for whom he voted. For both of these reasons his vote should not be rejected or deducted from the vote for Pacheco.

The minority therefore claim that, as to the four voters the testimony in relation to whom we have been considering, their ballots cannot be rejected; and consequently, instead of deducting from Pacheco twelve votes, as reported by the majority, there should only be deducted eight.

ILLEGAL VOTING FOR CONTESTANT.

The majority concede that the following persons voted illegally for contestant, viz: John Doran, John Geddens, William A. Brophy, Joseph Marks, James A. Keys. In this the minority concur, so that there are, by the unanimous opinion of the committee, five votes to be deducted from the contestant on account of these voters.

But the majority report that the following-named persons did not vote illegally, &c., for contestant, and therefore that no deductions shall be made from his vote on their account, viz: Jesus Yorba, Thomas O'Mara, Thomas H. Methvin, George M. Clark, Gustave C. Perret, John Peterson. In this the minority do not concur. We insist that these men voted illegally for contestant, and therefore their votes should be deducted.

We therefore, for the convenience of the House, present the evidence as to each.

Jesus Yorba.

As to this man, the majority concede that he voted illegally, but claim that the evidence is not sufficient to prove that he voted for Wigginton. It is not necessary, therefore, to insert the evidence as to the illegality of his vote; we will therefore only produce that relating to the person for whom he voted.

T. J. Daly testified, pp. 100, 101:

Q. Were you a voter of San Diego in last November; if so, in what precinct?—A. Yes, sir; in first ward—Old Town.

Q. If you know whether Jesus Yorba voted on 7th last November in this county, tell where he voted.—A. He did, at first ward in this city.

Q. If you know what his politics were at that time, please state it.—A. Democrat.

Q. How long had Yorba been a resident of first ward precinct on the 7th of November, 1876?—A. He had been in Old Town about ten or twelve day—first ward.

Q. If you ever heard him say anything about who he voted for for Congressman in this district, or for whom he intended to vote for for Congressman, please state all he said about it.

(Attorney for contestant Wigginton, E. Parker, objects to the question last proposed, and to the answer which is intended to elicit, for the reason that the answer would only be hearsay testimony.)

A. I never heard him say.

Q. If any one came to the polls with said Yorba at the time he deposited his ballot, tell who he was.—A. Angle Smith.

Q. What was Smith's politics?—A. Democrat.

Q. Whom did Smith vote for for Congressman, do you know?—A. I do; for P. D. Wigginton.

Cross-examination:

Q. What nationality did this Jesus Yorba belong to?—A. Native of California, I believe.

Q. Where was he residing at the time you knew him?—A. Old Town. He was here on business.

Q. How long had you known him on the day of election, 7th November, 1876?—A. I did not know his name until he came to vote. I had seen him a few days before that in San Diego.

Q. Do you know where he was residing at the time?—A. I do not know positively, but I think at José Estadillo.

Q. To what political party does José M. Estadillo belong?—A. He is a Republican, but did not consider himself a voter; he claimed to be a citizen of Lower California.

Q. Do you mean by that that he did not vote at that election?—A. I do; he did not vote.

Q. What countryman was José M. Estadillo?—A. A Californian.

Q. What countryman was Angle Smith?—A. Half-breed American and Californian.

Q. How do you know Angle Smith voted for P. D. Wigginton?—A. He told me so.

Q. Is that the only way you know?—A. He was electioneering all the day for Wigginton.

Q. How do you know he was electioneering all the day for Wigginton?—A. He told me that he would, and other parties told me that he was.

Q. Then all you know about his voting for P. D. Wigginton for Congressman November 7, 1876, is what you have heard him and others say?—A. He was the only one who told me so.

Q. Were you an officer of that precinct?—A. I was an election officer.

Q. Do you know Yorba?—A. I do.

Q. Do you know how he voted for Congressman November 7, 1876?—A. I do not.

Q. What nationality does he belong to?—A. Native Californian.

Q. Do you know from common report how the native Californians, as a class, voted in the fourth Congressional district of California for Congressman November 7, 1876?—A. They voted, as a class, for Governor Pacheco.

Q. Did you or did you not take an active or prominent part in the election which came off 7th November, 1876, in first ward precinct?—A. I did take an active part.

Q. Do you consider yourself qualified to tell, to a reasonable certainty, how Jesus Yorba voted for Congressman at that election?—A. I do not.

Q. Have you an opinion as to how he voted?—A. I have.

Q. What is that opinion?—A. I have an opinion, based on report, that Yorba voted for Mr. Pacheco.

Q. Do you know that the native Californians generally vote for one of their own race when he is a candidate for office?—A. They do.

The proof is that he was a Democrat and was voted by Angle Smith, a strong Democrat, who was actively supporting Wigginton and electioneered for Wigginton all day. According to all rules on the subject, this would be sufficient to establish that he voted for Wigginton. Certainly, according to the ruling of the majority in some of the cases presented by the contestant, it is amply sufficient. The reason given by the majority for holding that the proof will not warrant finding that he voted for Wigginton is that he was a native Californian, and it is asserted that they as a class voted for Pacheco. But that will not suffice, for it does not appear that they as a class are Democrats. If that were clearly proven the proposition would not be without some force. But even then it is fully answered by the fact that Angle Smith, who was a Democrat, who voted for Wigginton and electioneered for Wigginton and went to the polls with Yorba, was one of these same natives—a half breed American and Californian.

This is an illegal vote for Wigginton, and should be deducted.

George M. Clark.

This man wrote his name on his ballot for the express purpose of *imparting knowledge* of the fact that he voted that particular ballot. It is clear that under the statute of California that ballot should have been rejected. We quote the statute. Section 1207:

SEC. 1207. When a ballot found in any ballot-box bears upon it any impression, device, color, or thing, or is folded in a manner to designate or impart knowledge of the person who voted such ballot, it must, with all its contents, be rejected.

The evidence that he voted for Wigginton is distinct and emphatic. It was a marked ballot, Clark having written his name on it, so that it could be known that he voted it.

The following uncontradicted testimony makes these things clear:

Q. Do you know George M. Clark, of the first ward?—A. I do.

Q. Please state whether or not George M. Clark voted at the first ward precinct in this city on the 7th November, 1876.—A. He did.

Q. For whom did he vote for Congressman?—A. For P. D. Wigginton.

Q. If there was any mark upon his ballot at the time he voted which would distinguish it from other ballots after it was deposited in the box, please state what that mark was.

(Objected to by attorney for Wigginton, on the ground that it presumes that the witness knew whether or not the ballot had a private mark on it at the time it was deposited in the ballot-box, and on the ground that there has been no evidence offered

or given tending to show that the witness possessed any such knowledge or information.)

A. There was; his name was written on the bottom of the ticket.

Q. If Clark said anything about it at the time he deposited the ballot, tell what he said.—A. He did. He had come to the polls two or three times to vote, and when near the polls James McCoy took him away; he came again just before the polls closed and voted; he then said that he had written his name on the ticket *so that old Jim would know that he had not voted against his wishes.*

Q. If you were acting in any official capacity on that day, please tell what it was.—A. I was; I was one of the judges of election.

Thus it is apparent that this voter put this mark, his name, on the ticket for the express purpose of *imparting knowledge of the person who voted it*, bringing the case exactly within the provisions of the statute above quoted.

But the majority say that the name was written on the *face* of the ballot. Now, read again the statute and see if that makes any difference. The statute is, "when a ballot found in any ballot-box bears upon it any impression," &c. It makes no kind of difference where that impression is placed. When such a ballot is found it must be rejected. If the device or impression were upon the back, as would seem to be the interpretation of the majority, then the ticket need not find its way into the box, because it could be detected or seen before it went in; but it is clear that no matter where it is placed on the ballot, when such ballot is found it is to be rejected.

But the majority further urge that there is no evidence that this ballot was counted. The following evidence would seem to settle that question as well as the question as to whom he voted for:

Deposition of T. J. Daley.

Question. Did you see the ballot of George M. Clark deposited in the ballot-box at that election?—Answer. I did.

Q. Did you at that time see any private mark upon that ballot by which it could be distinguished from other ballots?—A. I did not; where I was sitting I could not see into the ballot-box.

Q. Then how can you say there was a private mark upon the ballot which he voted that day?—A. After the polls were closed, the board proceeded to count the votes. A. L. Seely, the inspector, handed the ballots to me, one by one, as one of the judges of the election, to read them to the clerks; in reading the ballots, one was handed to me, and the name of George M. Clark was written on the bottom of it, just as Clark had said; written with lead-pencil.

Q. Do you know of your own knowledge that that ballot with Clark's name upon it was voted by that George M. Clark?—A. I only know what he said when he voted; there was no other ticket with his name on.

Redirect examination:

Q. Do you know the handwriting of George M. Clark, who voted at that precinct as above stated?—A. I do.

Q. Was the name on that ticket in his own handwriting?—A. It was.

Q. Who was voted for for Congressman on the ballot upon which was written the name of George M. Clark?—A. P. D. Wigginton.

Q. What's the politics of James McCoy?—A. Democrat.

T. J. DALEY.

It seems to us that if there is anything plain in this case, it is that this vote was cast and counted for Wigginton, and should be deducted and voted for contestant.

Thomas O'Mara.

This man evidently had no right to vote. He procured the name and number of another person on the great register, personated that person, and voted for contestant.

The following is the evidence (Record, page 149):

WILLIAM W. ROBINSON, being duly sworn, says:

Question. How long have you lived in the city of Los Angeles, county of Los Angeles, State of California?—Answer. Eight years on the 15th of this month.

Q. Were you at the polls in the second precinct of the city of Los Angeles at the election of Representative in Congress, in November, 1876, while the votes were being cast?—A. I was.

Q. Did you see the person vote who gave his name as Thomas O'Mara, voting number 5953 on the great register of Los Angeles County?—A. I did.

Q. Was his vote challenged?—A. It was. I challenged it.

Q. On what grounds, and for what reasons?—A. On the ground that he was not a citizen of the United States, and that he was not on the great register; that he was not the person whose name he was voting.

Q. Was his ballot received by the board of election?—A. It was.

Q. Why did you challenge his vote on the reasons heretofore stated?—A. Because a short time previously, on the same day, he was in the county clerk's office, and wanted the county clerk, myself, and several others to get him naturalized, he stating that he was not naturalized, but that he had served in the Army, and had a right to be naturalized; but he had no papers to show that he had served in the Army. The county clerk told him that there was no court in session, and that he could not be naturalized that day. He also, at that time, gave a different name from that under which he voted. His age was apparently over sixty, while his age on the great register, at that date, was thirty-four. I mean the name by which he voted.

Q. Did you hear this party state how he voted or intended to vote, or see him receive the ballot which he voted?

(Objected to by Mr. Ganahl as leading.)

A. He told Mr. Potts, myself, and others, while in the clerk's office, and afterward to myself, but before he voted, that he was a good Democrat, and wanted to vote the Democratic ticket. He came to the polls with his ticket direct from a stand kept by Mr. Roeder, a Democrat, who afterward told me that he gave him his ticket and number—and he had his number on a piece of paper when he came to the polls.

(Counsel for contestant, Wigginton, moves to strike out all the testimony as to the declarations of the voter; as to his intention and desire to vote the Democratic ticket, as the same furnish no evidence of the fact that the voter cast his vote for Mr. Wigginton, as it appears from the county of Los Angeles and the city; also, that there were at least over two hundred Democrats, so called, who voted for Mr. Tilden and who did not vote for Mr. Wigginton, and out of that number at least one hundred and twenty-five who voted for Mr. Pacheco.

Contestant Wigginton objects to the statements of Roeder to the witness Robinson as wholly incompetent, upon the ground that the same are hearsay.)

Q. How long since you have seen the person referred to who cast the vote?—A. I do not know that I have seen him since the day he cast the vote.

Q. Did you examine the ballots that were distributed by Mr. Roeder on that day; and, if so, what name was upon said ballots for Representative in Congress from this Congressional district?—A. I did; and Mr. Wigginton's name was on all the tickets I saw for Congress.

Q. Do you know where the party to which you have referred as voting is at the present time?—A. I do not.

Q. Was the party to whom you refer as voting on number 5953 the same party described in the great register of 1876, of Los Angeles County, under that number?—A. He was not; he was a much older man.

It seems to us that this is a clear case of falsely personating another. There is no evidence that weakens the force of what is quoted above. On the contrary, it is strengthened by the cross-examination, as witness the following:

Q. Is not your entire evidence, as to the identity of the party voting with the Thomas O'Mara enrolled, based upon the appearance of the party voting and the entries in the great register opposite the name of Thomas O'Mara?—A. Partly so; but it is based also upon his own repeated declarations above testified to.

Q. Did he not in these declarations state to you that his name was Marja?—A. My recollection is that he gave his name as Patrick or John Mara. It certainly was not Thomas O'Mara.

This was clearly an illegal vote for Wigginton.

Gustave C. Perret.

This man voted for contestant without being naturalized. The following evidence is conclusive on that subject (see Record, p. 152):

Mr. ALFRED JAMES sworn.

Question. Where do you now reside, and if in Los Angeles County, California, how long have you been a resident of said place?—Answer. I reside in Los Angeles County, California, and have resided there between eight and nine years.

Q. Were you at the polls in the fourth precinct, city of Los Angeles, at the election for Representative in Congress on November 7, 1876?—A. I was.

Q. Did you see the person vote who gave his name as Gustave C. Perret?—A. I did.

Q. Was his vote challenged?—A. I challenged his vote.

Q. On what grounds did you challenge his vote?—A. On the ground that he was not a citizen of the United States, and also that his name was not on the great register of Los Angeles County.

Q. Was his ballot received by the board of election?—A. It was.

Q. Do you know from whom he procured his ballot?—A. Of my own knowledge I do not. He was immediately prior to the time when he presented his ballot in company with J. L. Arpin, and Arpin during that day was frequently in company and apparently in consultation with Thomas D. Mott, and I also think with Thomas Rowan, both of whom were actively at work on that day for the Democratic ticket, including P. D. Wigginton for Representative in Congress.

Q. How long have you known Thomas D. Mott, G. L. Arpin, and Thomas Rowan, and what have been their political affiliations during that time?—A. I have known them about five years, during all of which time I have known them to be active members of the Democratic party.

Q. How long since you have seen the man who voted as Gustave C. Perret?—A. I have not seen him since the day he voted.

Q. Do you know where he now is?—A. I do not; I have made inquiries concerning his whereabouts without gaining any information relating thereto.

Cross-examined:

Q. Did the man Perret swear in his vote?—A. He did.

Q. Did he present his card of registration?—A. He did.

Q. Do you not know that he voted for Pacheco?—A. I do not.

Q. Do you not know that Thomas D. Mott and Thomas Rowan are warm friends of Mr. Pacheco?—A. I do not.

Q. Do you not know at least a hundred so-called Democrats voted for Mr. Pacheco in this city?—A. I do not.

Q. Do you know how this man Perret voted, whether for Wigginton or Pacheco?—A. I do not.

Q. Are you a Know-Nothing or a Republican?—A. I am a Republican.

Q. Are you not an active Republican, and were you not holding office under the Federal Government in November last, and did you not as such take an active part in the election in that month?—A. I am, and was at that time register of the United States land office in this city, but took no more active part in the election than I deemed it my duty to my party.

ALFRED JAMES.

JOHN BRIERLY, on p. 159, testifies:

Q. Do you know Gustave C. Perret, and did you know him the day of the election, November 7, 1876?—A. I saw him at the polls in the fourth precinct of Los Angeles City, Los Angeles County, at that election. I have no other acquaintance with him.

Q. Was his vote challenged at the time you refer to? If so, state what occurred.—A. It was challenged by Alfred James, on the grounds that he was not a citizen of the United States, and that he was not enrolled upon the great register of Los Angeles County. He presented a certificate of registration, and his vote was received by the board of election.

Q. What do you know of his politics at that time and before?—A. I had no personal acquaintance with him, and only know the politics of the person who gave him his ballot and was his witness when he applied for naturalization papers.

Q. Who was the man that gave him his ballot, and what kind of ballots was he distributing at the time he gave Perret his ballot?

(Objected to by counsel for contestant as incompetent, immaterial, and irrelevant.) A. His name was J. L. Arpin. He was distributing straight Democratic ballots at that time.

Q. Do you swear that Perret voted the straight Democratic ticket?—A. I have stated that I have no personal acquaintance with Perret, and know nothing as to how

he voted, except that J. L. Arpin, who was working for the straight Democratic ticket and distributing straight Democratic ballots, was Perret's witness when he applied to be naturalized, and Arpin gave Perret his ballot.

Q. Do you swear that he voted the ballot that Arpin gave him?—A. I cannot swear that he voted that ballot, though I went to the polls and requested Mr. James to challenge his vote, and was observing him closely, until he gave his ballot to the inspector of the election, and I firmly believe he did not change the ballot after he received it from Arpin.

Q. I do not ask you as to your belief; I ask you to swear to what you know.—A. As all ballots in this State are uniform in size and style of paper and printing, and the law forbids the unfolding of a ballot within one hundred feet of the polls, I cannot and do not know how anybody voted, except myself; and by the statements of other voters I do not know how Perret voted.

JOHN R. BRIERLY.

This man Perret had not been naturalized. It is perfectly clear that he was not naturalized until *the 2d of December following the election*, as is shown by the following records:

In the county court of the State of California.

Present, Hon. H. K. S. O'Melveny, judge.

In the matter of the application of Gustave C. Perret, an alien, to become a citizen of the United States of America, in open court, November term, A. D. 1876, this 2d day of December, A. D. 1876, as yet of said term.

It appearing to the satisfaction of this court, by the oaths of J. L. Arpin and citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that Gustave C. Perret, a native of Switzerland, resided in the United States of America three years next preceding his arriving at the age of twenty-one years, and that he has continued to reside in the United States to the present time, and has resided within the limits and under the jurisdiction of the United States five years at least last past, and within the State of California for one year last past; and that during all of said five years' time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and the said applicant has declared his intention to become a citizen of the United States; and having now here before this court taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to the republic of Switzerland:

It is therefore ordered, adjudged, and decreed that the said Gustave C. Perret be, and he is hereby, admitted and declared to be a citizen of the United States of America.

H. K. S. O'MELVENY,
County Judge.

Signature:
GUSTAVE C. PERRET.

OFFICE OF THE CLERK OF THE COUNTY COURT OF THE STATE OF CALIFORNIA,
In and for the county of Los Angeles, ss:

I, A. W. Potts, clerk of the county court of the State of California, in and for the county of Los Angeles, said court being a court of record, having common-law jurisdiction and a clerk and seal, do certify that the above is a true copy of the act of naturalization of Gustave C. Perret, with affidavit of witness and applicant attached, as the same appears upon the records of said court now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 14th day of September, in the year of our lord one thousand eight hundred and seventy-seven, and in the year of our independence the ____.

[SEAL.]

A. W. POTTS, Clerk.
By D. M. ADAMS, Deputy Clerk.

UNITED STATES OF AMERICA, *State of California:*

In the county court of the county of Los Angeles, county of Los Angeles, ss.

In the matter of the application of Gus. C. Perret to be admitted a citizen of the United States.

J. L. Arpin, of said county, being duly sworn, testifies and says that he is well acquainted with the above-named Gus C. Perret, and has been so acquainted with him

for five years, and that the said Gus. C Perret has continually resided within the limits and under the jurisdiction of the United States of America for five years last past, and for one year last past within the State of California; and that during such time he has behaved himself as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

Subscribed and sworn to in open court this 2d day of December, A. D. 1876.

[SEAL.]

A. W. POTTS, Clerk.

STATE OF CALIFORNIA, County of Los Angeles, ss:

I, Gus. C. Perret, do solemnly swear that I will support the Constitution of the United States, and I do absolutely and entirely renounce and abjure all allegiance and fidelity to all and every foreign prince, potentate, state, or sovereignty whatever, and particularly to the Republic of Switzerland.

GUSTAVE C. PERRET.

Subscribed and sworn to in open court this 2d day of December, A. D. 1876, before me.

These records show beyond question that this man *was not naturalized until December 2, 1876*. His vote must therefore be rejected.

John Peterson.

This man procured naturalization papers by fraud. His papers were procured by means of perjured testimony. This is shown by the evidence of Peterson himself. (See Record, p. 144.)

He testifies as follows:

JOHN PETERSON, being called and examined as a witness on behalf of Mr. Pacheco, and being first duly sworn, testified as follows:

Question. Where do you live?—Answer. In Red Wood City, Cal.

Q. How long have you lived here?—A. Four years the 29th of January next.

Q. Did you vote at the last Presidential and Congressional election on November 7, 1876?—A. Yes, sir; I did.

Q. Where?—A. In Redwood City, San Mateo County, California.

Q. Who did you vote for?—A. I voted for Tilden for President.

Q. Who did you vote for for Congressman?—A. I have forgotten his name. I voted the Democratic ticket.

Q. Was it the straight Democratic ticket?—A. It was. I voted the straight Democratic ticket.

Q. Would you know the name of the Congressman if you heard it?—A. I think I would.

Q. Was it P. D. Wigginton?—A. Yes, sir.

Q. Where were you born?—A. In Sweden.

Q. When did you come to the United States to reside?—A. In 1868.

Q. How old were you when you came?—A. I was born on the 17th of June, 1841.

Q. How old were you when you came in 1868?—A. I was 26, going on 27 years.

Q. Did you offer to register in Redwood City before the Presidential election?—A. Yes.

Q. Did you apply for naturalization at Redwood City?—A. Yes.

Q. When?—A. The day before the election.

Q. Did you get naturalized then?—A. No, sir.

Q. Why? State what occurred.—A. I had no witnesses there who knew me in California under age. I was in California in 1858, but did not remain then.

Q. How did you come, and what was you doing here in 1858?—A. I came in a vessel.

Q. What was you doing on the vessel?—A. I belonged to the ship as one of the crew.

Q. Did you remain on board of her and go away with her?—A. Yes, sir.

Q. Where did you go to?—A. We went to Newcastle, England.

Q. What was the ship; where did she belong?—A. The Alert; Copenhagen, Denmark.

Q. Where did you go to from Newcastle?—A. We went back to Denmark.

Q. When did you next return to the United States?—A. To New York, in 1867.

Q. Did you remain then in the United States, or return?—A. I shipped from New York in 1867, and came to San Francisco in 1868.

Q. When you applied for naturalization at Redwood City the day before the last Presidential election, had you first papers—I mean your declaration of intention?—A. No; I did not have them.

Q. Did the clerk of the court ask you for them?—A. Yes, sir.

Q. Did he refuse to naturalize you because you had not your first papers?—A. Yes, sir.

Q. What did you then do relative to getting out your papers?—A. Then I went back to my place here in Redwood City, where I had a saloon, and one of my witnesses come along with me to my saloon, and asked me if I wanted to go down to San Francisco, he would try to get the papers out for me. Then I said I did not care about going to the city if I did not get my papers in Redwood City. So he said to me, "Come along"; and he started off to San Francisco the day before the election.

Q. What did you do after you got to San Francisco?—A. We went up to the twelfth district court to see if we could get my naturalization papers. When we got there we found we could not get them before half past eleven that evening.

Q. Did you go to the court at half past eleven o'clock that night?—A. Yes, sir.

Q. State what was done there.—A. That witness I had with me, named John Hanna, he spoke to the judge about getting my naturalization papers.

Q. Did the clerk swear Hanna as a witness for you?—A. Yes, sir.

Q. What did the judge ask Hanna?

(Objected by Mr. Wigginton upon the ground that it is an attempt to show by the witness the record of the twelfth district court of this State, and that the same is irrelevant and secondary evidence.)

A. He asked Hanna if he knew me in California under age.

Q. What was Hanna's answer?

(Objection same as above.)

A. He said he knew me in California in 1858.

Q. When did you first ever see Hanna?—A. Saw him first in San Francisco, in 1870 or 1871.

Q. Did you then get your papers from the twelfth district court?—A. I did.

Q. On these papers did you get registered in Redwood City?

(Objected as secondary.)

A. I did.

Q. Who was it that proposed to you to go to San Francisco and get naturalized?

(Objection, as immaterial and irrelevant, and further that there is no evidence that he was ever naturalized.)

A. John Hanna.

Q. You mean the John Hanna that was the witness?—A. Yes, sir.

Cross-examination by Mr. Wigginton:

Q. Do you know of your own knowledge who was the owner of the vessel on which you came to the United States in 1858?—A. His name was Hans Sjourensens.

Q. Was he the master of the ship?—A. No; he was the owner.

Q. How do you know he was the owner?—A. I know by hearing the captain and crew say so.

Q. When you first came to the United States, where did you land?—A. In San Francisco.

Q. How long did you remain there?—A. About two months or a little more.

Q. What did you do while you were here?—A. I remained on board the vessel in the harbor.

Q. When you left San Francisco had you any intention of returning?—A. No, sir.

Q. When did you first form the intention of residing in and becoming a citizen of the United States?—A. Since 1868.

Q. When you went before the twelfth district court, in San Francisco, and applied for your citizen-papers, did you or did you not know that you were not entitled to them?—A. I did not know whether I was entitled to them or not.

Q. Did you understand, in making that application, that it was necessary for Hanna to swear that he knew you in California in 1858?—A. No, sir; I did not.

Q. Did you hear Hanna swear that he knew you in California, in 1858?—A. Yes, sir.

Q. Did you object when you heard him swear it, or did you remain silent?—A. I remained silent; said nothing.

Q. Who paid your expenses to San Francisco?—A. I did.

Q. To whom, if any one, have you made a statement of the facts and circumstances under which you procured your citizen-papers?—A. I stated it to Mr. Van Dusen, the attorney here, in the United States district attorney's office in San Francisco, some time in November or December of last year.

Q. Can you swear positively, of your own knowledge, that the name of P. D. Wigginton was on the ticket which you voted at the election in November, 1876?—A. No, sir I cannot swear exactly; it was the straight Democratic ticket, but I did not take particular notice of it.

Q. Give the name of any one man, or more, that you are sure you voted for in the Presidential election of 1876.—A. I voted for Tilden. That is all I know.

Q. Are you as sure that you voted for Tilden as you are of anything else you have testified to in this deposition?—A. Yes, sir.

Q. Do you read and write English readily?—A. I can read English, but cannot write it.

Q. Did you read your ticket before you voted it?—A. I looked over it, but did not take particular notice of all that was on it.

Q. Are you sure that Tilden's name was on it?—A. Yes, sir.

Redirect by Mr. Van Dusen :

Q. Do you remember of Hañna being tried for perjury in the United States district court last winter?

(Objected to as irrelevant and secondary.)

A. Yes, sir.

Q. Were you a witness for the Government in that case?

(Same objection as above.)

A. Yes, sir.

Q. When you say you voted for Tilden, or that Tilden's name was on the ticket, do you mean you voted the straight Democratic ticket, and for Democratic electors and Congressman?

(Objected to as leading, and being in the nature of a cross-examination of the cross-examination of the defense.)

A. Yes, sir.

JOHN PETERSON.

Now here is a clear, palpable case of procuring fraudulent naturalization-papers. In the majority report the singular doctrine is asserted that because these papers were issued by a court of competent jurisdiction and were regular on their face, they cannot be "attacked collaterally." That is to say, if, by means of perjury, a man can commit a fraud upon the court and upon the law, and thereby get his papers, he can get the benefit of that fraud, and when he presents himself as a voter his vote must be received. Just what is meant by the majority by saying that the papers cannot be attacked collaterally is not very clear. We can conceive of nothing that can be meant except that somebody would have to go into court and in a direct proceeding set aside the papers for fraud. We cannot believe that this House will ever indorse such a preposterous doctrine. The rule of law is stated by McCrary, section 21, just the reverse of what is here ruled by the majority. Parol evidence is competent to prove the fraud, and when it is proven the vote is rejected. This was clearly an illegal vote for Wigginton and must be rejected.

Thomas S. Methvin.

This man voted for Wigginton illegally. He had left the State with his family two or three years before; he went to Arizona to make it his home, and only returned two or three weeks before the election. That is clear, from the evidence, which is as follows (p. 129, Record):

Question. State your name, age, residence, and occupation.—Answer. John Saviers; my age is fifty-five; I reside at Pleasant Valley, in Ventura County, California; I am a farmer by occupation.

Q. Did you act in any official capacity in Pleasant Valley precinct at the last November election; and, if so, what?—A. I was one of the judges of election.

Q. Did you at that time know Thomas Scott Methwin, or Methvin?—A. I did know a man by that name.

Q. Did he vote at that election?—A. Yes, sir.

Q. How long had he resided in this State, and in Pleasant Valley precinct, immediately preceding the day of election?—A. To my own knowledge it could not have been more than twenty days. I cannot say positively whether it was twenty, forty, or sixty days; but I don't think that it was over twenty days.

Q. Do you mean twenty days in the precinct or in the State?—A. I mean both.

Q. Do you know of Methvin residing in the State before that time; and, if so, whether he left the State, and where he went to, if he did leave the State, and about

what time he left? Tell all about it in your own way.—A. In the summer of 1874 or 1875 he left to go to Arizona to make that his home, so he told me before he went. Previous to his leaving for Arizona he must have been in that precinct for three or four years.

Q. Did he make any statement, in answer to his vote being challenged, about how long he had been back in this State from Arizona; and, if so, was it by affidavit or otherwise?—A. He made an affidavit, claiming a right to vote upon the ground that he reserved the right to return.

Q. In that affidavit did he state that it was his intention to return to this State and make it his home at the time that he left the State to go to Arizona?—A. He did not.

Q. When he left this State to go to Arizona did he take his property with him or did he leave it at his former home in Pleasant Valley?—A. He left no property that I know anything about.

Q. Had he any home or homestead or house in Pleasant Valley during the time that he was in Arizona?—A. No, sir.

Q. Did he move his family to Arizona when he went himself?—A. He started with his family, but I do not know where he took them to.

Q. Did he take up any land or purchase any while he was in Arizona?—A. Personally, I don't know.

Q. Did you hear him, or any one that was in Arizona with him, say anything about that? If so, what?

(Question objected to on the part of contestant, on the ground, 1st, that the answer sought would be only hearsay; 2d, that in regard to title to real estate parol evidence is inadmissible; 3d, because the evidence is immaterial and irrelevant.)

A. He said himself on the examination respecting his right to vote that he had not taken up any land or claim. Mr. Hicks the next day after the election told me that he would swear that Mr. Methvin had located a mining-claim, and that he, Methvin, could not leave Arizona till the return of some \$350 from San Francisco as pay for his claim.

Q. Did you ever hear Methvin state what he was doing in Arizona during the time that he was there? If so, state what he said about it.—A. I don't recollect that he ever did tell me what he followed in Arizona.

Cross-examination:

Q. This statement made to you by Mr. Hicks about Methvin having a mining-claim was made in private conversation, was it not?—A. Yes, it was.

Q. Was Mr. Methvin present at this conversation when it took place?—A. He was not.

Q. Do you know of your knowledge what year, month, and day of the month, that Mr. Methvin left this State, if he left it at all?—A. I don't know certain the day of the month, nor too certain the year, but it was over one year from the time he left till he returned, to the best of my knowledge.

Q. Can you state of your own knowledge that when he left Hueneme Township, as you have stated, that he went to Arizona?—A. He told me that he was going to Arizona. When he came back he said he had been to Arizona.

Q. Did Mr. Methvin not state to you that he went to Arizona for temporary purposes only, and not with the intention of abandoning his residence in Hueneme Township or precinct, Ventura County, California, and that he always considered that his home, or words to that effect?—A. He never told me anything, but on the day of the election he stated to the board that he reserved a right to return to California if he wished to.

Q. Was his vote challenged upon the ground that he was not a resident of Pleasant Valley precinct?—A. Yes, sir; nor of this State. He was challenged on both grounds.

Q. Was his vote received by the board of election?—A. It was.

Redirect:

Q. Did he not refuse to swear that when he left the State to go to Arizona that it was his intention to return to this State?—A. He refused to answer the question, only that he reserved a right to return.

Q. When he told you that he was about to go to Arizona, give, as near as you can, the words that he used about making Arizona his home.

(Objected to on the ground that this is a matter already inquired into in the direct examination, and not in response to any new matter inquired into in the cross-examination.)

A. He told me that he had no home here for him or family, and that Arizona was the last place that he knew where he could get Government land to get him or making him a home.

Q. Was he a Democrat or a Republican before and at the time that he voted at the last November election?—A. He always claimed to be a Democrat.

Q. Do you know whether he voted for Pacheco or Wigginton at said election?—A. I do not know who he voted for.

JOHN SAVIER.

JOHN W. SEBASTIAN testifies (p. 131):

Question. State your name, age, residence, and occupation.—Answer. My name is John William Sebastian; my age is 45; I reside in Pleasant Valley, Ventura County, California; I am a blacksmith by occupation.

Q. Do you know Thomas Methvin, late of Pleasant Valley precinct?—A. I do.

Q. Did he vote in that precinct at the last November election?—A. He did.

Q. About how long had he resided in that precinct immediately preceding said election?—A. I am not sure how long he resided there before the election.

Q. About how long before the election had you seen him there?—A. Three or four weeks.

Q. Do you know anything about where he came from when he came there, either from his own say-so or otherwise? If so, please state all about it.—A. I heard others say that he came from Arizona; I did not hear him say anything about it.

Q. How long had you resided in that precinct or neighborhood before the last November election?—A. About ten months, I guess.

Q. At the time of the November election, was said Methvin a Democrat or a Republican?—A. I could not tell you.

Q. Did you not, with others, take quite an active part in insisting or urging his right to vote at said election, when his vote was challenged?—A. I knew not anything about his vote being challenged till I see him reaching his ticket to the judges or inspector, and then there was some talk about his having a right to vote or not. I said I thought that he had a right to vote.

Q. Why did you say that "you thought he had a right to vote"?—A. Because I had been in his same situation. I have voted before that. Not at that election.

Q. Are you not a Democrat, and were you not working actively for the success of the Democratic ticket at that election?

(Objected to on the ground that it is immaterial whether the witness was a Republican or a Democrat.)

A. I am and I was.

Q. And did you not urge Methvin to vote at that election?—A. I did not.

Q. Did you not know what ticket Methvin was voting or trying to vote at that election?—A. I did not at the time. I always supposed him to be a sort of a half-way man, and I was afraid to tackle him for fear I would hurt myself.

Q. You say you did not at the time know how he would vote; have you learned since how he voted?—A. I have not.

Q. Then what did you mean by the remark "at the time," in your former answer?—A. Well, at the time I was afraid that he would go against my party, therefore I was afraid to say anything to him.

Q. If you was working actively, as you say, for the success of the Democratic ticket at said election, why did you so earnestly urge before the judges that he had a right to vote when you was afraid that he would vote against your party?—A. Because I believe every citizen has a right to vote.

Q. Was that the only reason?—A. Yes.

Q. Had you ever known Methvin before he come there some three or four weeks before that?—A. Yes, sir.

Q. How long had you known him?—A. Three or four years.

Q. Where had you known him?—A. At Pleasant Valley.

Q. And don't you know that he was a Democrat?

(Objected to this and other questions which have been asked this witness, on the ground that they are leading and in the nature of cross-examination.)

A. No; I don't.

Cross-examination:

Q. Is it not usual, or of frequent occurrence with citizens of this county, to make trips to Arizona for the purpose of prospecting and locating mining-claims, without any intention of abandoning their homes in this State?

(Objected to as no cross-examination of anything that the witness has testified to in his direct examination.)

A. I have known of several that have left this part and came back, and are living here now.

Q. Do you know, of your own knowledge, that Thomas Methvin was not in this State and in Pleasant Valley precinct more than thirty days before the day of the November election?—A. I do not know exactly the time. I think that he was here about three or four weeks before the election.

Q. So far as you know, might he not have been in this State, county, and precinct six weeks before the election?—A. I don't know; could not say.

Redirect:

Q. Is it usual or of customary occurrence for citizens of this county to declare openly to their neighbors that they are going to move to Arizona for the purpose of making it their home, and immediately gather all their property and their families and go to Arizona with the same, and go into business there and remain there for a year or two, and not have the intention of abandoning their residence in this State, and acquiring a residence in the State of Arizona; have you known several such; if so, who are they?—A. I have not known any such.

J. W. SEBASTIAN.

Deposition of Albert Sidney Clark.

Question. State your name, age, place of residence, and occupation?—Answer. My name is Albert Sidney Clark; my age is 28; I reside in Pleasant Valley precinct, in the county of Ventura; I am a merchant by occupation.

Q. Were you at the polls of election held in Pleasant Valley precinct, in this county, in last November?—A. Yes; I was.

Q. Do you know Thomas Methvin, late of that precinct?—A. I do.

Q. Did he vote at said election in that precinct?—A. Yes; I think he did.

Q. How long had you resided in that precinct immediately prior to said election?—A. I don't know how long.

Q. How long had he resided in that precinct after the election?—A. I could not say how long. I could say if I had my little book, because he has purchased some little things in the store which I keep.

Q. Well, give your best recollection whether it was a week, a month, or longer?—A. I could not say; such things as that I pay very little attention to. I could not say what month, what week, or day he left after the election.

Q. About how far did he reside from your store during his stay there at that time?—A. He lived awhile within about a mile of the store, and afterward he moved to a place about three and a half or four miles from my store. That was the place from where he moved away the last time.

Q. Were you not a Democrat, and working quite actively for the success of the Democratic ticket in that precinct in the last November election?—A. I was and did.

Q. Did you know that Methvin's vote was challenged, and that there was quite a contest before the board of election between the Republicans and Democrats as to whether Methvin should be allowed to vote or not?—A. I heard some discussion among the members of the board upon his vote being challenged. They took his oath, and he swore that he only went to Arizona for a temporary purpose. That is as near as I can remember. The board, after swearing him, took his vote.

Q. Was there not considerable discussion before the board by the Republicans and Democrats who were not members of the board, and did not each party urge their claims—the Republicans that he had no right to vote, and the Democrats that he had a right to vote?—A. Well, there was a discussion—talk. The Democrats claimed that he had a right to vote, and that he had not lost his residence by simply being absent temporarily. The Republicans insisted that he had no right to vote. I think that the most of the talk was done by a man who had not known Mr. Methvin previous to his going to Arizona.

Q. Were you not one of the Democrats that insisted that he had a right to vote?—A. No.

Q. Was he a Democrat?—A. I don't know that I could swear that he was a Democrat. He has voted the Democratic ticket.

Q. Didn't you believe him to be a Democrat at that time?—A. I could not say; that is a question that no man can tell.

Q. Didn't you furnish him the ticket or ballot for that election?—A. I furnished all the Democratic tickets that were voted that day.

Q. Do you know what ticket he voted that day?—A. I do not, positively.

Q. Have you any reason to know, either positively or otherwise; if so, what are they?—A. No; I don't know whether I have.

Q. Have you learned since that day how he voted, in any way?

(Question objected as not proper in form and hearsay in its character.)

A. I have not had any conversation with him with regard to it.

Q. Have you learned in any other way?—A. I never made any inquiry.

This man had left the State to make his home in Arizona. He had no present purpose of returning to California. He clearly had lost his residence in that State, and did not return more than 30 days before the election.

The following is the law of the State, sec. 1239, subdivisions 6 and 7

6. If a person remove to another State with the intention of making it his residence, he loses his residence in this State.

7. If a person remove to another State with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this State, notwithstanding he entertains an intention of returning at some future period.

It is quite clear that this man voted illegally for Wigginton, and his vote should be rejected.

It is conceded by the majority that in La Graciosa precinct one vote was counted for Wigginton that should have been counted for Pacheco. In this we concur.

CONCLUSION.

The result of the foregoing is as follows:

By the returns Pacheco has.....	19,104
Add on account of La Graciosa.....	1
	19,105
Deduct eight illegal votes.....	8
	19,097
Wigginton by return has.....	19,103
Deduct on account of La Graciosa.....	1
	19,102
Deduct illegal votes as follows, four of which are conceded by majority....	11
	19,091
Pacheco's majority.....	6

We therefore recommend the adoption of the following resolutions:

Resolved, That Romualdo Pacheco is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the fourth Congressional district of California.

Resolved, That Peter D. Wigginton is not entitled to a seat in this House as a Representative to the Forty-fifth Congress from the fourth Congressional district of California.

JNO. T. WAIT.
FRANK HISCOCK.
H. PRICE.
J. M. THORNBURGH.

I concur in the report of the minority as to Waterman and Scott. I am clearly of opinion that they were legal voters, and that their votes should be counted for Pacheco, the contestee.

E. JNO. ELLIS,
Member of Committee.

I concur in the report of the minority that the vote of Charles Gilbert should not be deducted from Pacheco, the evidence being insufficient to show that his vote was cast for Pacheco.

MILTON A. CANDLER.

THOMAS M. PATTERSON vs. JAMES B. BELFORD.

THE STATE OF COLORADO.

This case arises out of the two elections for Representative in Congress from Colorado; the contestee claiming to have been elected at an election held October 3, 1876, and the contestant on November 7, 1876. The question being as to which of those days was the day prescribed by law for holding such election.

Held, That the act of Congress of March 3, 1875, which modifies section 25 Revised Statutes so as not to apply to any State whose constitution must be amended in order to effect a change of the election of State officers, in no way related to Colorado.

The provisions of law which fix the time and place of holding elections are mandatory; and the election held in Colorado on November 7, 1876, having been conducted in accordance with the general election laws of the State, and on the day prescribed by law for holding such elections, was the only legal election for Representative in Congress.

The House adopted the majority report December 13, 1877.

Thomas M. Patterson sworn in.

DECEMBER 6, 1877.—Mr. JOHN T. HARRIS, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the subjects embraced in the following resolution of the House, namely—

Resolved, That the certificate presented by James B. Belford and the certified abstracts of votes cast upon the 7th day of November, A. D. 1876, for Representative to the Forty-fifth Congress, and accompanying papers, presented by Thomas M. Patterson, upon which each claims the office of Representative to the Forty-fifth Congress of the United States from the State of Colorado, be referred to the Committee on Elections, to be appointed hereafter, with instructions to said committee to report either as to the *prima facie* right or final right of said claimants, as the committee shall deem proper, and that neither claimant be sworn in until said committee reports—

submit the following report:

The right of each of the parties to the contest, in this case, turns upon the question as to whether the 3d day of October or the 7th day of November, 1876, was the day prescribed by law for holding the election in the State of Colorado for a Representative in this, the Forty-fifth Congress.

James B. Belford claims a seat in this House by virtue of an election in the State of Colorado on the 3d day of October, 1876, and Thomas M. Patterson claims a seat by virtue of an election held in said State on the 7th day of November thereafter.

The respective claimants appeared before the committee and submitted able and exhaustive arguments upon the facts and the legal questions involved.

Your committee are relieved from the necessity of passing upon many of the facts involved in the case by the following stipulation, signed by

the respective parties, and filed as a part of the record in the case (page 7):

Stipulation as to votes cast at November election for Representative to the Forty-fifth Congress.

In the matter of Representative to the Forty-fifth Congress from the State of Colorado.

THOMAS M. PATTERSON }
 vs. }
 JAMES B. BELFORD. } Claimants.

It is hereby mutually agreed and stipulated between the said Thomas M. Patterson, of the one part, and the said James B. Belford, of the other, that if laws were in force and by virtue of which an election might have been legally held in the State of Colorado upon the 7th day of November, A. D. 1876, for Representative to the Forty-fifth Congress from said State, then and in that event the following number of votes were legally cast by qualified electors, at an election held in said State upon the said 7th day of November, A. D. 1876 for said Representative to the Forty-fifth Congress, and which votes were divided among the persons respectively voted for upon said day, for said office, as follows:

Whole number of votes cast for Representative to the Forty-fifth Congress, thirty-eight hundred and twenty-nine (3,829), and of which

Thomas M. Patterson received thirty-five hundred and eighty (3,580).

James B. Belford, one hundred and seventy-two (172).

Scattering, seventy-seven (77).

And in view of the foregoing, it is further stipulated and agreed that all registry-lists and poll-books of said election, and the returns and abstracts of votes cast thereat, and which accompany the testimony in said case, and are produced by the said Thomas M. Patterson for the purpose of establishing the number of votes so cast at the said election, may be omitted in the printing of the said testimony, the statement concerning said votes hereinbefore made to be taken upon the condition first hereinbefore mentioned by the House of Representatives and the Committee on Elections of said House as a full, true, and correct account of the same.

In witness whereof we have hereunto affixed our hands this 2d day of November, A. D. 1877.

THOMAS M. PATTERSON.
 JAMES B. BELFORD.

It is also admitted that Mr. Belford received a majority of the votes cast on the 3d day of October, and if that were the day prescribed by law for holding the election for Representative in the Forty-fifth Congress from Colorado, then Mr. Belford is entitled to the seat.

The question has also been raised and considered by the committee as to whether either of said days was the day prescribed by law, and whether any legal election has been held in said State for Representative in the Forty-fifth Congress.

The following facts are established beyond controversy:

1. That the secretary of state did, on the 31st day of August, 1876, issue his proclamation (printed Record, page 138) notifying the people that there would be an election on the 3d day of October, 1876, for State officers and for "one Representative for the unexpired term, Forty-fourth Congress"; that this proclamation made no mention of the election of a Representative in the Forty-fifth Congress; and that the sheriffs of the several counties of the State promulgated like proclamations and notices.

2. That on the 14th day of September, 1876, the secretary of state issued his proclamation (printed Record, page 254) giving notice of an election to be held November 7, 1876, for a Representative from the State at large for the Forty-fifth Congress; that no other officers were to be elected at such election, and that the sheriffs of the several counties issued like notices in their several counties.

3. That these proclamations by the secretary of state and the sheriffs

of the several counties were the only notices published by legal authority, or otherwise, relating to said elections until after the election on the 3d day of October.

4. That the names of both contestant and contestee were printed generally upon the tickets used at the election on the 3d day of October for both the Forty-fourth Congress (unexpired term) and the Forty-fifth Congress; but there was no agreement between the respective claimants or their friends as to whether the 3d day of October was the day prescribed by law for holding the election for a Representative in the Forty-fifth Congress.

5. That on the 10th day of October, one week after the election on the 3d day of that month, J. C. Wilson, chairman of a State political committee favoring the election of Mr. Belford, issued a address (Record, pp. 45-47) calling on the friends of Mr. Belford to prepare by registration and otherwise for the election on the 7th day of November.

6. That on the 16th day of October the secretary of state issued a proclamation withdrawing his proclamation of September 14, which gave notice of the election on the 7th November.

7. That on the 14th day of October, the said J. C. Wilson, on behalf of Mr. Belford, withdrew his name from any further candidacy for Congress, claiming that he had been elected on the 3d day of October to the Forty-fifth Congress, as well as to the unexpired term of the Forty-fourth Congress, and advised Mr. Belford's friends to take no part whatever in the election on the 7th day of November.

8. That the votes cast at the election on the 7th day of November were counted by the proper officers, in eleven counties, and transmitted to the secretary of state, but were not canvassed by that officer, or by any State canvassing-board; that in the other fifteen counties of the State no abstracts of the votes cast were sent to the secretary of state by the county clerks; but the stipulation filed by the parties to the contest, and above set forth, shows the true result of the votes actually cast in the whole State.

There are no material facts in the case that are disputed.

Your committee are of opinion that, so far as the facts are concerned, the election on the 3d of October, and also that on the 7th of November, were sufficiently regular to constitute a valid election of a Representative in the Forty-fifth Congress from the State of Colorado; and the only question about which there can be any doubt is, as to which of those days was the day prescribed by law for holding such election.

There was no notice given for holding an election on the 3d day of October for a member of the Forty-fifth Congress. But the law is well settled that where the time and place for holding an election are fixed by statute, any voter has a right to take notice of the law, and to deposit his ballot at the time and place appointed, notwithstanding the officer, whose duty it is to give notice of the election, has failed in that duty. (Cooley, Constitutional Limitations, 603; McCrary on Elections, sec. 118.) There was no canvass of the votes cast on the 7th day of November by the State canvassing-board, but Mr. Patterson produces certified copies of the abstracts of the votes which are on file in the office of the secretary of state of Colorado, and also proof of the number of votes cast in the several counties of the State. Nothing is better settled than this, that the failure of a board of canvassers to canvass the votes and declare the result does not invalidate an election otherwise regular and valid.

The important and controlling question in the case is, therefore, this: Whether the 3d day of October or the 7th day of November was the

time prescribed by law for holding the election for a Representative from Colorado in the Forty-fifth Congress.

Upon this point your committee invite attention to the following provisions of law and their proper construction.

1.—THE ACTS OF CONGRESS.

The twenty-fifth section of the Revised Statutes is as follows:

The Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates to the Forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter, is established as the day for the election, in each of said States and Territories, of Representatives and Delegates to Congress commencing on the fourth day of March next thereafter.

Your committee are of the opinion that the twenty-sixth section of the Revised Statutes, in reference to the filling of vacancies in Congress, has no application to the case of the election of the first Representative in Congress to which any new State may be entitled, and that the first election, if for an unexpired term, is not in any sense the filling of a vacancy, as provided for in said twenty-sixth section of the Revised Statutes.

Your committee are also of the opinion that the act of March 3, 1875, which modified the twenty-fifth section of the Revised Statutes so as not to apply to any State whose constitution must be amended in order to effect a change of the election of State officers in such States, in no way related to the State of Colorado.

2.—THE ENABLING ACT.

If Colorado has been exempted from the operations of the twenty-fifth section of the Revised Statutes, such exemption results from the sixth section of the act entitled "An act to enable the people of Colorado to frame a constitution and State government and for the admission of such State into the Union on an equal footing with the original States," approved March 3, 1875. The sixth section of the said act is as follows:

That until the next general census, said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until such State officers are elected and qualified under the provisions of the constitution, the Territorial officers shall continue to discharge the duties of their respective offices.

A similar provision was contained in the enabling act of Nevada and other States. The sixth section of the Nevada act, approved March 21, 1864, is as follows:

SEC. 6. *And be it further enacted*, That until the next general census shall be taken, said State of Nevada shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and State and other officers provided for in said constitution, may be elected on the same day a vote is taken for or against the proposed constitution and State government.

It is clear and unmistakable that this section refers only to the first election to be held in the State, and that the Representative in Congress to be elected at that time was only to be elected for a constitutional term, and not for the whole period of the decade until the next general census. The intention of Congress in the case of Nevada was

evidently to provide for the election at the first election of the member of Congress to which the State might then be entitled under the constitution and laws.

A similar provision in the Colorado act should be construed in like manner, unless there is something in the text or context which warrants a different construction.

A careful analysis of the sixth section of the Colorado act is necessary to a clear understanding of its meaning and scope:

That until the next general census, said State shall be entitled to one Representative in the House of Representatives of the United States.

This language evidently refers only to the number of Representatives to which the State is to be entitled until the next general census—one Representative, as distinguished from two or more.

The words "*which Representative*" evidently refer to the *one* Representative which the State is entitled to elect at the first election. In the Nevada act this construction will not be disputed, and was actually carried into effect by the action of Congress and the people of that State. The language of the Nevada and the Colorado acts is precisely the same on this point, and a construction which applied to the one applies equally to the other. If it be contended that the words "*which Representative*" referred to the Representative to which the State was entitled until the next general census, the provision would be unconstitutional and void; for the Constitution of the United States (Art. I, sec. 2) provides that—

The House of Representatives shall be composed of members chosen every second year by the people of the several States.

Hence it cannot be supposed that Congress intended to authorize the people of Colorado to do an unconstitutional thing; namely, to elect a Representative for more than two years.

And if such had even been the plain language of the section, it would be good only to the extent of its constitutionality; that is, for the first term, or part of a term, that might be filled at the first election of State officers.

Let us proceed further:

Which Representative, together with the governor and State and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention.

It is evident that the day to be fixed by the constitutional convention was that upon which the first State officers were to be elected; for the subsequent part of the section leaves no doubt upon the point:

And until such State officers are elected and qualified under the provisions of the constitution, the Territorial officers shall continue to discharge the duties of their respective offices.

The words "*such State officers*" refer to the State officers mentioned in the first part of the section, and it is absurd to suppose that the Territorial officers should hold office after the first officers elected under the new State constitution should be elected and qualified. The section is relieved from all doubt on this point. Hence the election-day which Congress authorized the constitutional convention to fix was the day upon which the first set of State officers of the new State were to be elected, and it was upon that same day that the one Representative in Congress to which the State might be entitled was to be elected, for the words "*which Representative*" and the words "*the governor and State and other officers*" all relate alike to the phrase "*shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention.*"

3.—THE PROVISION OF THE CONVENTION.

The constitutional convention of Colorado evidently construed the sixth section of the enabling act as only authorizing it to fix the time for holding the first election of a Representative in Congress. The provision of the constitution of Colorado on this subject is as follows:

One Representative in the Congress of the United States shall be elected from the State at large, at the first election under the constitution, and thereafter at such times and places and in such manner as may be prescribed by law. (Sec. 44, Art. 5.)

If it were constitutional for Congress to confer upon the Colorado convention the power to fix the time for holding Congressional elections, and if Congress had actually authorized the convention of Colorado to do so, yet the convention failed to fix a time, except for the first election. Thereafter the election was to be held "at such times and places and in such manner as may be prescribed by law." It will not be contended by any one that the mere authorizing of the constitutional convention to fix the time for holding Congressional elections actually repealed the time already fixed by Congress without the constitutional convention having exercised the authority conferred upon it. A power of attorney authorizing an agent to sell certain lands, does not transfer the title from the principal to the agent; and if the agent fails to make the sale which he was authorized to make, there has never been a change of ownership. So if Congress could confer upon any other body power to repeal an act of Congress, in its discretion, and if such body should fail, or refuse to make the repeal, the act would continue in force, just as if the authority had not been given.

4.—REPEALS BY IMPLICATION.

If section 6 of the enabling act did work a repeal of the twenty-fifth section of the Revised Statutes, such effect can only be given to it by implication. But the well-established rule of construction is this, that one statute is not to be construed as the repeal of another if it be possible to reconcile the two together. (*McCoul vs. Smith*, 1 Black, 459.) And the Supreme Court has also held that "a repeal by implication is not favored; the leanings of the courts is against the doctrine, if it be possible to reconcile the two acts of the legislature together." (1 Black, U. S. R., 470.) "Before there is a repeal by implication there must be such repugnancy that the two statutes cannot stand together or be consistently reconciled." (*Marlot vs. Lawrence*, 1 Blatchford, Ct. Ct., 608.) See, also, Mr. Justice Story in *Wood vs. The United States* (15, Peters, 363), where this doctrine is clearly stated and cogently applied to a similar case of construction. It will not be pretended that there is a positive repugnance between the sixth section of the enabling act and the twenty-fifth section of the Revised Statutes. The two sections can stand together and be consistently reconciled. It is not only possible to reconcile the two sections, but it is only by "an ingenious course of argument" that any repugnance is made possible.

5.—A LAW OF CONGRESS THE SUPREME LAW OF THE LAND.

From the foregoing it will appear that the twenty-fifth section of the Revised Statutes, which fixed the Tuesday next after the first Monday in November, 1876, as the day for electing Representatives to the Forty-fifth Congress in all the States of the Union, was not repealed as to

Colorado by the sixth section of the enabling act, or in pursuance thereof. Congress having, in the exercise of its constitutional power, fixed the time for holding the election for Representatives in the Forty-fifth Congress in all the States, from the moment of the passage of the act of Congress it became and was engrafted upon the statutes of every State in the Union, and it required no auxiliary State legislation to give effect to the national statute. But the election laws of the several States which fixed the places and prescribed the manner of such elections were not affected, altered, or repealed; and the national statute fixing the time and the State statutes fixing the places and prescribing the manner of holding the Congressional elections, formed a complete election machinery for the election of Representatives in Congress.

6.—ELECTION-LAWS OF COLORADO.

The schedule to the Colorado constitution (section 1) provides that all laws in force in Colorado at the adoption of the constitution should remain in force until altered or repealed by the legislature. It is not disputed that there was a well-defined and perfect code of election-laws in force in Colorado at the time of the adoption of the constitution. In pursuance of these laws, the State election and the election for Representative in Congress for the unexpired term of the Forty-fourth Congress were held on the 3d day of October, 1876, and Mr. Belford does not question the validity of such laws, for he claims his own election on the 3d of October, 1876, to this Congress, by virtue of an election held in pursuance thereof. These State laws provided fully for the places and prescribed the manner in which "all general and special elections" should be held in the State. There were, then, in force in the State of Colorado, on the 7th day of November, 1876, laws providing a full, complete, and perfect election machinery for electing a Representative to the Forty-fifth Congress—the time fixed by Congress, and the places and manner provided by the State statutes.

7.—LIGHT VOTE POLLED.

Objection has been made to the seating of Mr. Patterson, upon the ground that there was a light vote polled at the November election, compared with the vote at the October election. But Mr. Belford cannot complain of this, nor can his political supporters. For his name was withdrawn from the canvass three weeks before the November election, and his supporters were advised not to participate in the election. The absence of a contest would naturally result in a light vote. At the recent election for governor and other State officers in the State of Virginia, there were polled in the city of Richmond less than two thousand votes out of an aggregate voting population of thirteen thousand. There was no contest between opposing forces, and a light vote was the result. But no one will seriously contend that this impaired, in the slightest degree, the validity of the election. The law is well settled on this point. Mr. McCrary, in his work on the law of elections, states the rule thus (section 448):

If an election is held according to law, and a fair opportunity is presented to all voters to participate, those who do not vote are bound by the result.

In the case of *Rex vs. Munday* (2 Couper, 238), Lord Mansfield, in delivering the opinion of the court, said:

Upon the election of a member of Parliament, where the electors must proceed to an election because they cannot stop for that day to defer it to another time, there must be a candidate or candidates; and in that case there is no way of defeating the election of one candidate proposed but by voting for another.

In the case of *The Commonwealth vs. Read* (Brightly's Election Cases, 130-1), this rule is recognized to the fullest extent. In this case it was the duty of the board of county commissioners, under the statute, to elect a county treasurer. The board consisted of twenty members, all of whom were present, but a controversy arose among them as to the manner of voting, whether *viva voce* or by ballot, and only one of their number, Abraham Miller, voted by ballot, while the others voted *viva voce*. The statute required the election to be by ballot, and by virtue of this one vote Reade claimed to be elected. The court instructed the jury as follows:

In all our public elections those who neglect or refuse to vote according to law are bound by the votes of those who do vote, no matter how small a minority those who do vote are of the whole constituency. It is an historical fact that about forty thousand electors who voted for one or the other of the candidates for governor at the late election did not cast any vote for or against the amended constitution, and yet that instrument has, by a comparatively small minority, become the supreme law of the land. The result of our opinion is that if you are satisfied from the evidence that Abraham Miller tendered a vote by ballot for the defendant, and that his vote by ballot was received as such, then has the defendant sustained his plea of having been, on the 1st of April last, duly elected county treasurer.

A former Committee of Elections of this House (Nineteenth Congress, 1st session), in the case of Biddle and Richard *vs.* Wing (Clark and Hall, page 507), laid down the rule which has always been recognized. The report in that case held that—

The law appoints a particular time and place for the expression of the public voice. When that time is past it is too late to inquire who did *not* vote, or the reason why. The only question now to be determined is for whom the greatest number of legal vote have been given.

The small vote on the 7th of November in Colorado was not the result of intimidation of voters; but, on the contrary, the supporters of one of the claimants of the seat voluntarily absented themselves from the election by preconcerted arrangement, and for the very purpose of invalidating the election, so far as it was in their power to do so by their absence. Conceding that there was an honest difference of opinion among the voters of Colorado as to the legal day for the election, some believing the 3d day of October and others the 7th day of November to be the lawful day, yet it will not be pretended that the proper construction of an act of Congress is to be determined by the voters of a particular district. The provisions of law which fix the time or place of holding elections are mandatory. As to the time of election, the day cannot be changed even by the consent of all the voters. (McCrary, sec. 114.)

Ignorance of the proper time, or a misunderstanding of the law on the part of a portion of the electors, will not deprive those who do understand the law and who do act upon the day prescribed by law, from their right to vote and control the election. It is not denied that the election on the 7th day of November was conducted in accordance with the general election-law of the State; that all electors who desired to do so were permitted to vote, and that the canvass and result were honestly made and published.

CONCLUSION.

Mr. Patterson having received a majority of all the votes cast at the election on the 7th day of November, 1876, in the State of Colorado, for Representative in the Forty-fifth Congress, and that being the day prescribed by law for holding such election, your committee recommend the adoption of the following resolution:

Resolved, That Thomas M. Patterson is entitled to a seat in this House

as the Representative in the Forty-fifth Congress from the State of Colorado.

All of which is respectfully submitted.

JOHN T. HARRIS.
WILLIAM M. SPRINGER.
MILTON A. CANDLER.
JAC. TURNEY.
THOS. R. COBB.
JERE. N. WILLIAMS.
E. JNO. ELLIS.

I reserve the right, in a report hereafter to be filed, to assign my own reasons for agreeing with the conclusions of the above report.

E. JNO. ELLIS.

Mr. JOHN T. WAIT, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY.

The undersigned, from the Committee on Elections, dissenting from the views of a majority of your committee, submit the following, in the contested-election case from the State of Colorado.

In determining who, if any one, as a Representative from Colorado, is entitled to a seat in the House, two questions must be considered :

1st. Did Congress empower the constitutional convention to fix the time at which the member to this Congress from that State should be elected ?

2d. If this power was conferred by Congress on the convention, did that body execute it ?

The section of the enabling act bearing on the question of Colorado's representation in Congress reads as follows :

SEC. 6. Until the next general census said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and other State officers, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention.

That the convention was to have power over the Representative mentioned in this section is, it seems to us, entirely certain. The only words of limitation in the provision and upon the grant of power are "until the next general census." Certainly there is nothing in the section which limits the election of the Representative mentioned therein to the unexpired term of the Forty-fourth Congress, nor is there any language which limits it to the first Representative to be elected.

The words "which Representative" relate to the Representative or representation the incoming State would be entitled to until the next census, and the day subsequently referred to to be designated for elections refers to a day or period of time periodically recurring.

To section 6 of the enabling act, as above quoted, should be added :

And till such State officers are elected and qualified under the provisions of the constitution, the Territorial officers shall continue to discharge the duties of their respective offices.

It is claimed this language proves only one set of State officers and one election are referred to in the section.

It seems to us the whole object of the above clause is to indicate when the Territorial abdicate in favor of the State officers. If it read "until State officers are elected," omitting the "such," the above argument would not be made. Then to what does "such" refer? Our understanding is, the object of the preceding provisions of the section in reference to elections was to provide the Representative should be chosen with the State officers, until the next general census, and in speaking of State officers it refers to all in their respective lines of succession until then.

Doubtless the section provides for a first election, and it contemplates an "election day" will be fixed for future State officers and Representatives—a day, as we have before remarked, periodically recurring for future elections, and the only effect of the word "such," if it has any special effect, is with more particularity and certainty to refer to State officers elected under the constitution.

We think it does not strengthen or change the meaning of the provision.

We next call the attention to section 44 of the constitution, which provides:

One Representative in the Congress of the United States shall be elected from the State at large at the first election under this constitution, and thereafter at such times and places and in such manner as may be provided by law.

It will be remarked the constitution follows the words of the enabling act in describing who is to be elected. "*One Representative*" * * "is to be elected."

The provision was prepared in the light of and with the act of Congress before the convention, and we suppose it is not open for argument that the acceptance of a power, the execution of a grant of power, in the very language of the grant, is a full acceptance and a complete execution.

The section of the constitution quoted intended to and did provide for the election of a Representative to Congresses then in existence or thereafter to be held, for the election to which, according to the usages and laws in other States, and in the light of the usages of this House and the laws of the United States, the day indicated would be reasonable and proper; and since other States are now represented here by the authority of elections held upon or about the day fixed, its reasonableness and propriety as a day to elect a Representative from Colorado to the Forty-fifth Congress cannot be questioned.

The day is indicated by section 7, providing for general elections the first Tuesday of October, commencing with 1876, and continuing to, and including, 1878, the first Tuesday in October, 1876, being the first election within the language of the forty-fourth section above quoted, "the first election under this constitution."

The argument against this construction is, that "Representative," as there used, refers to a Representative to the Forty-fourth Congress. If read thus, we submit the subsequent lines "thereafter at such times," &c., means "Representatives to Congress, thereafter, at such times," &c. We will render the section with the interpolations:

One Representative in (the Forty-fourth interpolated) Congress of the United States shall be elected from the State at large, at the first election under this constitution, and (Representatives to Congress interpolated) thereafter (meaning after the Forty-fourth) at such times, &c.

Placing in the provision the first interpolation, and "thereafter" must of necessity have the purpose and meaning of the subsequent interpolation.

The last clause of the section "thereafter at such times," &c., "as may be provided by law," does not provide for legislation in the State for a future election-day to the Forty-fifth Congress. The section of the enabling act we have cited clearly confines the election to the day of the election of State officers; and that having been by the convention designated the first Tuesday in October in each year, the legislature would have no power to change it, and any provision in the constitution purporting to give the legislature that power would be against the letter and spirit of said section 6 of the enabling act, and if said clause may seem to refer to future elections, if read by itself, the provisions for general elections we have cited, subsequently occurring in the constitution, the seeming inconsistency must yield to a harmonious interpretation not against the terms and spirit of the enabling act, and favorable to the conceded right of the State. And it seems to us the forty-fourth section is not a limitation upon the provision for general elections, but on the contrary, if it provides only for a Representative to the Forty-fourth Congress, the provision for general elections is the provision it contemplates for Representatives to future Congresses, and by force of it, the State could elect to the Forty-fifth Congress; that a constitutional convention may provide for the election of a Representative other than to the first Congress thereafter has been heretofore decided by the House of Representatives after due consideration and by a non-partisan vote. (See *Shiel vs. Thayer*, p. 357, 1st sess. 37 Cong., Globe Appendix, 1861, Vol. 45.)

Our conclusions and argument are supported by the fact if Colorado could not elect to this House in October, 1876, she could not at all. If we are right in the construction we have given section 6 of the enabling act, it is in conflict with the act of Congress designating the first Tuesday after the first Monday in November, biennially, for the election of Representatives, and being the later law, repeals it as to Colorado. And, as we have shown, the enabling act limited the election of Representatives to the day of the election of State officers, the first Tuesday in October in each year.

In this connection, it is to be observed the convention, further on in the constitution, provided:

SEC. 16. The votes cast for Representatives in Congress at the first election held under this constitution shall be canvassed and determined in the manner provided by the laws of the Territory for the canvass of votes for Delegates in Congress.

Would the convention have used the word "*Representatives*," a plural description, if it contemplated a *Representative* to the vacancy in the Forty-fourth Congress only was to be elected, and the preceding provisions only provided therefor?

That the constitutional convention assumed it had full jurisdiction of the question and intended to exercise it the last-quoted section makes apparent; it continued the election-laws of the Territory to the election in October and no further, and by the provisions of the constitution fixing the time of the assembling of the first legislature of the State and its methods of enacting laws, it was impossible for it to provide election laws for the first Tuesday after the first Monday in November (see constitution of Colorado); the inference follows it assumed a Representative to this Congress was to be elected in October, 1876; otherwise it intended not to make provision for such an election.

But supposing the constitution only provides for the election of a Representative to one Congress, in the absence of language showing another intent you are compelled to the conclusion it was for the one it had the constitutional right to provide for, and when Colorado was in-

vested with her sovereignty as a State, as to her there was a vacancy in the Forty-fourth Congress, and the Constitution of the United States provides (see next to last clause of section 3, article 1)—

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Certainly the election in October was not by virtue of any proclamation, and the constitutional way of filling a vacancy was not pursued, with the uncertainty when the State would be admitted. With the aforesaid right of the executive power to provide for filling a vacancy, who may say it is not fairly inferable the convention provided for electing to the first Congress after the admission of the State? But the State of Colorado and her people alone are interested in this question. She is entitled to representation, and the proper and only function of the House is to see that, within the principles of representation underlying the legislative branch of our government, she has her constitutional right. And upon this complex question—for we suppose it must be complex, since the views of members of your committee are so diverse—her people have put a construction.

We suppose it to be well settled in cases of the doubtful construction of a statute involving the rights of the people, and only their rights as distinguished from individual rights, the adoption of a particular construction with entire unanimity has never been disturbed by a power only interested to preserve the rights of the State; certainly never when the only possible injury to the constituency is in the political associations of the individual who shall represent the State if that construction shall remain unreversed. And we affirm most confidently the people of Colorado have construed the provisions hereinbefore discussed in accordance with our views; and upon that point we submit a few of the most prominent facts.

The call for the Republican convention notified the delegates that a candidate for the Forty-fourth and Forty-fifth Congresses would be voted for at the October election. (See answer to the 35th direct interrogatory to Mr. Wilson, chairman of the Republican State central committee, at page 42 of the printed testimony.)

As early as September 7, lacking but four days of one month before the October election, Mr. Patterson was engaged with his friends distributing throughout the State tickets with his name on for both Congresses. (See testimony of Wilbur F. Stone, pp. 101 and 102.) In his letter to Mr. Butler, chairman of the Democratic State central committee, written on the 7th day of September, he advises that gentleman that the popular belief is that the member to the Forty-fourth and Forty-fifth Congresses is to be elected at the October election. (See testimony, p. 68.)

The Kansas City Times, Colorado edition, a representative Democratic paper established in Colorado to advance the interests of the Democracy, in its issue of the 16th of September, advised the people to vote for Mr. Patterson for both Congresses at the October election, and repudiated the idea that the member to the Forty-fifth Congress could be elected at any other time.

General Hughes, the Democratic candidate for governor, when consulted by his friends on the subject, advised them to place Mr. Patterson's name on the tickets for both terms. (See p. 210.) The tickets were so printed and so voted in every county in the State. Twenty-six thousand and seventy-four votes were cast by the people at the October election as against 3,580 cast for Mr. Patterson in November.

Some stress has been placed on the fact that a proclamation was issued notifying the electors that the member to the Forty-fifth Congress would be elected in November. It is evident that the existence of this proclamation had little or no effect on the votes cast in October. Almost from the moment of its issuance it encountered the hostile criticisms of both parties, and was withdrawn some considerable time before the November election. It was issued by a clerk in the office of the secretary of state, during his absence from Colorado, and against his opinion and judgment.

The following tables of the official canvass establish most completely the unanimity of the people in giving to the provisions of the constitution the construction we have submitted.

Certificate of board of canvassers.

STATE OF COLORADO.

To his excellency Hon. JOHN L. ROUNT,
Governor of the State of Colorado:

We, the undersigned, composing the board of canvassers of the said State, respectfully represent that, in the discharge of the duties imposed upon them by the constitution and laws of said State, they did, in your presence, on the 28th day of October, A. D. 1876, proceed to canvass the votes polled at an election held on the 3d day of October, A. D. 1876, for Representative to the Forty-fourth and to the Forty-fifth Congresses of the United States, and we do hereby certify that we have carefully examined all the returns from the board of canvassers of each of the counties in said State, as returned and now on file in the office of the secretary of state, and that the following is the result of our canvass of the whole number of votes polled for said offices at said election, to wit:

For Representative in Forty-fourth Congress. For Representative in Forty-fifth Congress.

	James B. Belford.	Thos. M. Patterson.		James B. Belford.	Thos. M. Patterson.
Arapahoe County.....	2, 173	1, 792	Arapahoe County.....	2, 184	1, 779
Bent County.....	242	448	Bent County.....	238	446
Boulder County.....	1, 447	997	Boulder County.....	1, 538	1, 067
Conejos County.....	340	222	Conejos County.....	340	222
Clear Creek County.....	1, 064	1, 034	Clear Creek County.....	1, 065	1, 033
Costilla County.....	352	139	Costilla County.....	307	84
Douglas County.....	294	322	Douglas County.....	293	321
Elbert County.....	83	117	Elbert County.....	83	111
El Paso County.....	712	403	El Paso County.....	710	404
Fremont County.....	522	532	Fremont County.....	336	361
Grand County.....	79	137	Grand County.....		
Gilpin County.....	1, 015	754	Gilpin County.....	1, 018	752
Huerfano County.....	408	615	Huerfano County.....	409	612
Hinsdale County.....	396	396	Hinsdale County.....	395	396
Jefferson County.....	553	586	Jefferson County.....	557	581
Lake County.....	218	246	Lake County.....	215	135
La Plata County.....	53	106	La Plata County.....	21	76
Larimer County.....	384	309	Larimer County.....	364	309
Las Animas County.....	267	585	Las Animas County.....	675	1, 263
Park County.....	461	421	Park County.....	359	354
Pueblo County.....	540	741	Pueblo County.....	542	739
Rio Grande County.....	189	244	Rio Grande County.....	189	244
San Juan County.....	396	436	San Juan County.....	370	435
Saguache County.....	295	201	Saguache County.....	294	202
Summit County.....	197	188	Summit County.....	197	188
Weld County.....	754	476	Weld County.....	739	470
Total vote.....	13, 308	12, 810	Total vote.....	13, 438	12, 584

In testimony whereof we have hereunto set our hands and caused the great seal of the State to be affixed this twenty-eighth day of October, A. D. 1876.

(Signed)

JOHN TAFFE,

Sec'y of State.

L. C. CHARLES,

State Auditor.

[SEAL.]

State Treas.

In testimony whereof we have hereunto set our hands and caused to be affixed the great seal of the State of Colorado this twenty-eighth day of October, A. D. 1876.

(Signed)

JOHN TAFFE,

Sec'y of State.

L. C. CHARLES,

State Auditor.

[SEAL.]

State Treas.

More votes were cast for the candidates for the Forty-fifth Congress than for the vacancy in the Forty-fourth.

To further show the character of the contest, we call the attention of the House to the following extracts from the testimony. Mr. Wilson testified, page 240: "The vote polled was the largest ever known in the State, and was, in my judgment, as full a vote as was ever brought out at any election in any place."

Mr. Butler, chairman Democratic Central Committee, testifies, page 63, cross-interrogatories 9 and 10: "It was the first State election occurring in the centennial year and in the centennial State, and both parties made an earnest, tremendous effort for success." And again he says: "It was the most exciting election we ever had in Colorado, or would be likely to have for many years to come."

General Hughes, Democratic candidate for governor, testifies, page 74: "The canvass was an active one, both parties taking a great interest in it, and I think a very full vote of both parties was polled."

The result of this "earnest and tremendous effort for success" made by the friends of Mr. Patterson, resulted in the election of Mr. Belford.

To show the contrast of the October and November elections, we present the following comparative table of votes:

Counties.	Total vote October election for both Belford and Patterson.	Patterson's November vote.	Counties.	Total vote October election for both Belford and Patterson.	Patterson's November vote.
Archaeo	3,963	574	Jefferson	1,139	216
Bent	684	134	Lake	350	68
Boulder	2,605	302	La Plata	97	.....
Conejos	582	.....	Larimer	673	70
Clear Creek	2,098	331	Los Animas	1,938	322
Costilla	418	.....	Park	713	132
Douglas	614	98	Pueblo	1,281	456
Elbert	194	93	Rio Grande	433	29
El Paso	1,114	.....	San Juan	805	.....
Fremont	697	244	Saguache	496	32
Grande .....	.....	.....	Summit	385	.....
Gilpin	1,771	221	Weld	1,232	49
Huerfano	1,021	199			
Hinsdale	791	.....	Total	26,074	3,580

It has been suggested, the fixing of the date of an election of a Representative to Congress by a constitutional convention can only be justified, and is justified, by the necessities of the case. We have hereinbefore shown no legislative provisions, taking into account the time the State was admitted and its legislature was to assemble, could have been enacted for an election at the day (the first Tuesday after the first Monday in November) fixed by Congress, and therefore the same law of necessity justified as well the exercise of the right of fixing the day to elect to the Forty-fifth Congress as to the vacancy in the Forty-fourth.

We most respectfully recommend the adoption of the following resolution:

Be it resolved, That the Honorable James B. Belford is the duly elected Representative in the Forty-fifth Congress from the State of Colorado, and that he be sworn in as such Representative.

JNO. T. WAIT.

J. M. THORNBURGH

FRANK HISCOCK.

The undersigned, a member of the Committee on Elections, dissenting from the views of the majority of the committee, desires to submit the following in the matter of the contested seat of a Representative from Colorado:

The contest between James B. Belford and Thomas M. Patterson for the seat to which one Representative of Colorado is entitled in the Forty-fifth Congress is a mixed question of law and fact.

At a general election held in that State on the 3d day of October, D. 1876, votes were cast for a Representative in both the Forty-fourth and Forty-fifth Congresses. A little over twenty-six thousand votes were polled for the two candidates, which is admitted to be a full vote for the State. The vote for the Representative for the Forty-fifth Congress, as polled and returned, was a little larger than that for Representative in the Forty-fourth Congress. There is no reasonable doubt that both political parties did, in fact, cast their full vote at that election. Representative in both Congresses, and that if said election can be considered as a lawful election for a member of the Forty-fifth Congress James B. Belford is entitled to the seat, he having received a majority of the votes cast. As to this there is no dispute.

Thomas M. Patterson, who received a minority of the votes cast for Representative in the Forty-fifth Congress at the election above mentioned, seems to have claimed, prior to the October election, that a valid election for the present Congress could be held in October, that the 7th of November, the day fixed by Federal statute (if such statute controlled the matter) was the day on which the election for the Forty-fifth Congress must be held. He accordingly seems to have taken steps to have an election held on said 7th of November, and on that day 3,829 votes were cast for Representative in this Congress, of which 3,411 were cast for said Patterson and 172 for said Belford, the rest scattering. If said 7th of November was the lawful day for holding said election, and if a real election was then held by the people of Colorado Thomas M. Patterson is entitled to the seat, he having received nearly all the votes cast.

The questions of law are—

I. What was the lawful day, if any, for holding an election in Colorado for Representative in the Forty-fifth Congress?

II. What would be the effect of a general participation by the people of the State in an election for Representative held on some other day than the lawful day, if such should be the fact?

The question of fact is—

I. What was the general understanding and conduct of the people of Colorado in regard to the elections for Representative in the Forty-fifth Congress, held, or alleged to be held, on the 3d of October and the 7th of November, respectively?

The questions of law:

I. In examining and passing upon the provisions of law relating to the time, if any, fixed for the election, it is necessary to begin with the Constitution of the United States. Article 1, section 2, provides that "the House of Representatives shall be composed of members chosen every second year."

The obligation to have the elections *biennial* is, therefore, fundamental, and would override any other law, either Federal or State, which would seem to make a different provision, except in cases of vacancies from any State, when the same section provides that the "executive authority thereof shall issue writs of election to fill such vacancies." *Ex necessitate rei*, elections to fill fractions of a term cannot be biennial, and the fraction may be never so small; consequently, the law must be held to permit, and custom has certainly established it, that elections for a full and fractional term may be held on the same day. No other clause of the Constitution is found to treat of the subject of fractional terms, and the word "vacancies" in the section referred to is that under which all legislation on this subject has been authorized, including the act of Congress of February 2, 1872. (Revised Statutes, sections 25 and 26.)

Article 1, section 4, of the Constitution provides that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

This section manifestly gives to the legislative department of the several State governments primary and full control over the "times, places, and manner of holding elections" for Representatives in Congress, subject only to such limitation or interference as Congress may affirmatively enact, and subject also, of course, to the provisions of section 2 of the same article, before examined. Inasmuch as the general power over the subject rests with the legislative departments of the States, the acts of Congress cannot be held to have wider scope than their language necessarily means, and a *casus omissus*, if there be any, remains under State control.

Congress has provided by act of February 2, 1872 (Revised Statutes, §§ 25 and 26), the times of holding elections for Representatives in the several States, to wit, regularly on "the Tuesday after the first Monday in November, in every second year" after 1876, and starting with that year; and in case of vacancy, at such time as "may be prescribed by the laws of the several States."

The exceptions to this rule, made by any other acts of Congress than the Colorado enabling act, need not now be considered, as it is not claimed that they affect Colorado.

If, therefore, the time for holding elections for Representatives in the Forty-fourth and Forty-fifth Congresses were to be determined only by the provisions of law thus far referred to, it seems logically conclusive that the day for the election to the fractional term of the Forty-fourth Congress would be determined by the laws of the State, either under the twenty-sixth section of the United States Revised Statutes, or under the general provisions of article 1, sections 2 and 4, of the Federal Constitution, already cited. As to the Forty-fifth Congress, it would be equally conclusive that the time of election would be the Tuesday after the first Monday of November, 1876, which is admitted to have been on the 7th day of the month.

The machinery of election was provided by the Territorial laws, kept alive by the new State constitution, and no question could reasonably

arise as to the legal methods by which the will of the people might be expressed.

But, under its authority to admit new States into the Union, Congress passed an "enabling act" to authorize the organization of a State government for Colorado, which, apart from all other legal considerations must be the decisive authority in this case, because it was under and by virtue of it that Colorado became a State within the Union at all; and the right to any representation in Congress must rest upon the performance of the conditions and the pursuance of the methods provided by that act. Again, that act, being subsequent to the general statute of 1872, and being specifically directed to the case of Colorado, must be held to take the new State out from under the general law, as far as the fair intendment of the language of the enabling act would do so.

The sixth section of this act of Congress reads as follows:

SEC. 6. Until the next general census said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative together with the governor and other State officers, shall be elected on a day subsequent to the adoption of the constitution, to be fixed by said constitutional convention

In thus remitting to the constitutional convention of Colorado the authority to fix the day for election of Representative, Congress has distinctly and necessarily abrogated, in the case of that State, and for such period as is named in the act, every preceding Federal law upon the subject, saving, of course, the provisions of the Constitution. Although article 1, section 4, of the United States Constitution does not in terms name constitutional conventions as legislative bodies of the several States, the act just quoted is only one of numerous instances in which they are included in the generic term "legislative" by legislative interpretation in the acts of Congress. So notorious has been the custom of fixing the time of general elections, including those for Representatives in Congress, by the constitutions of the States, that a general exception to the twenty-fifth section of the United States Revised Statutes was enacted by Congress in 1875, in the case of the several States whose "constitutions must be amended" to make them accord with the act of Congress fixing the Tuesday after the first Monday in November as the day of electing Representatives. It must therefore be regarded as settled that a constitutional convention is included under the general term "legislative" in the Constitution of the United States, and acts of Congress made in obedience thereto.

We are thus brought to the decisive question, What is the extent of the power over elections of Representatives relegated to the legislative authority of Colorado by the section of the enabling act already quoted?

The State is declared "entitled to one Representative until the next general census."

"One Representative" cannot be held to mean the same individual during all the time named, nor that he is to be elected at one time for the whole period. The constitutional provisions as to biennial elections, length of the official term, and fractional terms, which have already been quoted, are the fundamental law, and no strain need be put upon the language of the enabling act to make it accord with them.

It provides that at all times "until the next general census" (and, by fair implication, until the results of such census can be made officially the basis of a new rule), Colorado shall be "entitled to one Representative." If, therefore, Mr. Belford were the Representative in the Forty-fourth Congress, Mr. Patterson in the Forty-fifth, and any other citizen of the State in the Forty-sixth or subsequent Congresses, during the period stated, no one would dream of claiming that the provision that

Colorado should have *one* Representative was violated because three or four different men had represented the State.

But how would it be as to the time of electing these successive Representatives? In the case of each of them in his turn but one pertinent question could be put, viz: Was he elected "on a day subsequent to the adoption of the constitution" of the State, and "fixed by said constitutional convention"? To claim that they must all be elected in one year would be a fault in logical interpretation of precisely the same kind as to say that they must all be the same individual.

The principal proposition of the said sixth section is that Colorado shall have one Representative. The qualifying causes are, first, that this rule shall last till the next general census; and, second, that such Representative shall be chosen on a day fixed by the constitutional convention. Whoever can answer the description given in these three respects is the lawful Representative of Colorado, and none other. Every rule of logical analysis makes the qualification that this shall be the rule, "until the next general census," apply to the whole of the section and all its parts. To except any one of them is to substitute a new law in the place of that which we find on the statute-book.

The next step in the investigation is to ask what the constitutional convention of Colorado did in the premises.

Section 44 of the State constitution is that which covers the subject. It declares that "one Representative in the Congress of the United States shall be elected from the State at large at the first election under this constitution, and thereafter at such times and places and in such manner as may be provided by law."

It is noticeable that in this section the term "one Representative" is used in the same way as in the enabling act, and the narrow interpretation which would insist that but one individual could be meant, or that an election but for one term could take place, might be as well applied here as to the act of Congress, except that the concluding clause, "and thereafter at such times and places," &c., fixes beyond cavil the meaning given to the enabling act by the convention. It manifestly intended to cover the whole period over which it could have jurisdiction and refers to the several terms of office during which Colorado might be entitled to but one Representative "at large."

This section does not *name* the day of either of the elections, but they are severally "fixed" (to use the word found in the enabling act) by reference to that which will definitely determine the time. The day of the first election for Representative is to be that of "the first election under this constitution," and of subsequent ones "as may be provided by law." Under the maxim of law "*id certum est, quod certum reddere potest*," this reference from one clause of the fundamental law of the State to another which names the day for the first election, and to the ordinary statute law for the days of subsequent elections, must be regarded as an entirely allowable and appropriate method of exercising the power remitted to the convention by the enabling act. This will appear the more clearly in regard to the reference to acts of the legislature, when it is remembered, as has been noted above, that the Constitution of the United States recognizes the power over such matters as being in the "legislature" of the State, and that it is only by implication (though an abundantly strong one) that the power can be considered as vested in constitutional conventions.

There can hardly be need of stopping to meet the possible objection that the phrase "provided by law," as found in the State constitution, means Federal law and not State laws. The most casual glance at con-

stitutions of the several States of the Union will show a uniformity and regularity of use which will at once remove any doubt. We are interpreting the fundamental law of a State; and its references to future provisions of law which it authorizes, and which will depend upon it for their validity, must necessarily look to the statutes of the State enacted to carry into effect the more general provisions of the constitution.

The forty-fourth section of the State constitution has therefore exhausted the power remitted to the constitutional convention by the enabling act, and it only remains for us to apply its provisions to the contest before us.

It is an admitted fact that the first election under the State constitution was held on the 3d day of October, 1876, and that neither in the constitution nor in any law of Colorado was the 7th day of November of that year named as the day for any election whatever. The conclusion is therefore inevitable that the latter day was not a lawfully-established day for the election of a Representative in Congress from the State of Colorado.

As to the election held on the 3d of October it is equally clear that it was a lawful day of election for a Representative in the Forty-fourth Congress. But how is it as to the Forty-fifth?

A series of elections for "one Representative" in Congress was manifestly the thing provided for. The only natural and unstrained interpretation of the forty-fourth section of the Colorado constitution, and the only one thoroughly in harmony with the principles of interpretation above applied to the enabling act, seems to be that the first, and the first only, of this series of elections should take place on the 3d of October, and the subsequent ones as the legislature might provide by law. It would have been quite competent for the constitutional convention to declare that the elections for the fractional term in the Forty-fourth Congress and the full term in the Forty-fifth should be held at the same election; but it did not do so.

It has been argued before the committee that there was not time for the legislature to act early enough to provide an election for the Forty-fifth Congress, and hence the necessity of the case would give a broader meaning to the language of the State constitution. The necessity is not apparent. The State legislature was to meet very early in November, 1876, in fact, on the first day of the month. The Forty-fifth Congress began its legal term on the 4th day of March following, though it was not expected to assemble till the 3d of December, 1877, and, in fact, did not assemble till the 15th of October. There was no lack of time between the 1st of November and 4th of March for the passage of an act and the holding of an election; or, if, as has been argued, a winter election in that region would be very inconvenient, it might have been fixed for any time in the following spring or summer without losing a day of the actual session of this Congress. The argument "*ab inconvenienti*" is therefore insufficient, and we are forced to the conclusion that the 3d of October, 1876, was not the day in fact established by the constitution or the laws of Colorado for holding an election for Representative to the Forty-fifth Congress.

It follows, from this reasoning, that no election for a member of this Congress was held on any day fixed by law in Colorado, for it is admitted that no act of the legislature exists in regard thereto, and that no other election has been held than those purporting to be on 3d October and 7th November.

But it is argued that although no day was lawfully fixed for such election, the action of the people of the State, generally taking part in

he election on the 3d October, and voting for a Representative in the Forty-fifth Congress, may cure any illegality as to the day and constitute a valid title to the seat.

Before we can intelligibly apply legal principles to this proposition, it is necessary to turn to the question of fact, and reduce to distinct form a few decisive points in the history of the case.

1. On the 14th September, notices of an election for Representative in the Forty-fifth Congress were issued to the sheriffs of the several counties of the State from the secretary of state's office, under the great seal of the State, and published in the newspapers. Under these notices the election was to be held on 7th November. (Record, p. 31.)

2. In pursuance of such directions, the several sheriffs issued their notices forthwith, advertising such election for the 7th November. (*Ibid.*)

3. The proclamation and the notices under it continued before the public from said 15th September past the election on 3d October, and until the 16th October, when it was recalled by another proclamation from the secretary of state's office, hereinafter quoted. (Record, pp. 140, 141.)

4. The official proclamation and sheriffs' notices for the October election specified a Representative for the Forty-fourth Congress only to be elected at that time. (Record, pp. 18, 19.)

5. The proclamation for the 7th November election was issued from the secretary of state's office by his assistant, in the absence and dangerous illness of the secretary himself, but by the advice of the governor, the United States district attorney, and other leading men. (Record, p. 20.)

6. On 10th October, a week after the first election, the Republican State central committee issued a circular, from which the following is an extract :

In consequence of the legal obstacles surrounding the election for member of Congress, it was deemed advisable to have the name printed twice on the tickets voted at the election on the 3d of October, and if the decision of the people at the ballot-box on the third instant had been against the Republican candidate, it was the intention of the party to withdraw the name of their candidate, and make no contest whatever for a seat in the Forty-fifth Congress. The Republicans were willing to abide the decision of the October election, and, if defeated then, to make no contest in November, but to allow that election to go by default. This the Democratic party of Colorado seemed to be unwilling to accede to. The result is that * * * it is very evident now that this election cannot be avoided, and it is for the Republicans throughout the State to determine whether we shall make our success of October 3 complete by another victory on November 7. (Record, p. 46.)

Before following the history further, it seems proper to report that the facts above enumerated incontestibly show that the people of Colorado were officially notified in such form that they were legally bound to take notice that the election on the 3d October would be for State officers and for a member of the Forty-fourth Congress only; and such notice continued public up to the day of the election itself. Not only can ignorance of it not be presumed; it is directly and formally rebutted. They further show that the Republican central committee did not understand or claim that the October election was a legal election for member of the Forty fifth Congress as late as the 10th October, but spoke of the placing of the name of Representative twice on the ticket, as done by them, because it was "deemed advisable"; and said that if their candidate had received a minority of the votes, they had intended to "*withdraw*" his name, "*and make no contest whatever for a seat in the Forty-fifth Congress.*" Such language from the committee in charge of a party's canvass is the strongest possible disproof of the idea that they

or the public regarded the voting for a member of the Forty-fifth Congress in October as anything else than an informal attempt to save time, expense, and trouble, which, as they themselves say, their opponents "seemed to be unwilling to accede to."

7. On the 13th of October a consultation was had between prominent Republicans of the State, in consequence, apparently, of a letter to the editor of the Denver News, that day published by the Hon. J. B. Chaffee, in which it was claimed that the election of a Representative to the Forty-fifth Congress was legal and complete on 3d October. (Record, pp. 44, 45.) The result of the consultation was the adoption of that view by those present, and the issuing on the next day, October 14, of a new circular by the Republican central committee, withdrawing that of October 10, and recommending Republicans to take no part in the election called for November 7. (Record, pp. 47, 48.)

8. On the 16th October a new proclamation issued from the office of the secretary of state, under the great seal, withdrawing former proclamation and notice for the election of November 7, on the ground that "it appears upon further examination that there is no law or statute authorizing said proposed election to be held, or any election to be held in the State of Colorado at that time." (Record, p. 140.)

9. To the circular of the Republican central committee of 14th October the Democratic central committee responded by a circular dated October 16, denying that the election of October 3 was legal as to the Representative in the Forty-fifth Congress, and insisting on the election for 7th November. (Record, pp. 69-71.) This was followed by others to the same purpose on October 21 and 31. (Record, pp. 75-78.)

10. At the October election both parties had provided tickets with names of Representative for both the Forty-fourth and Forty-fifth Congresses. The number of votes cast has already been stated. Hugh Butler, chairman of Democratic State committee, and others testify that the double tickets were prepared and voted at the October election, "as a matter of precaution" after learning that the Republicans were doing the like (Record, p. 58). That the opinion had become general that votes would be cast in October for both Congresses was stated by Mr. Patterson, the contestant, in a letter in evidence, dated September 7 (Record, p. 68). The numerous witnesses who testify on this subject leave the reasons for this action vague and indefinite, though nothing appears in the testimony inconsistent with the idea that there was an effort, never made clear or binding, to agree upon some mode of avoiding the second election in November. The Republican secretary of state and United States marshal testify that on October 3 it was generally understood that there was to be another election in November (Record, pp. 15, 52, 53, 54, 55). On the other hand some prominent Democrats appear subsequently to have agreed that there was probably no authority for the November election (Record, p. 27).

It is no doubt the rule of the law in regard to elections that the expressed will of the people shall be followed, if it be reasonably practicable to construe legal provisions so as to carry it out.

It has, however, never been claimed that unofficial committees of political parties could abrogate the official proclamations of State officers, or, in the presence of such official notice to the contrary, condense two elections into one. In order to do this it would be necessary to find that the law was clearly in accord with the action of the people contrary to the proclamation, and that the people themselves clearly intended at that time to make their action final and conclusive.

As has been already shown, the law did not fix the 3d of October as

the day to elect a member to the Forty-fifth Congress, and the overwhelming weight of proof is that neither the people, their officers of state, nor their party committees regarded the October election, *at the time*, as conclusive and final in this respect.

In regard to the 7th of November election, the day was not only not the lawful one, as we have above shown, but the State officials had become convinced of this and withdrawn the election proclamation and notices.

The condition of the public mind is probably best described by the secretary of state, Mr. Clark, who testifies:

Many were doubting the legality of an election for Representative in the Forty-fifth Congress on the 7th day of November, others claiming that it would be a mere matter of form anyway, because there was some kind of an understanding between Mr. Belford and Mr. Patterson that whichever was beaten at the October election would not be a contestant against the other at the November election; others claimed that only a member to the Forty-fourth Congress could be elected under the constitution, and that the general assembly must provide by law for the holding of an election for the Forty-fifth Congress. (Record, p. 16.)

When in the midst of the public uncertainty thus described, in which the confusion was increased by the acts of party committees, prompted by the fear that their opponents would get the start of them, an election was nominally held, in which hardly more than one-seventh of the electors took part, less than one-third, even, of the party claiming the victory, and almost none of their opponents; when in the city of Denver, the capital of the State, and where were the political managers and committeemen, the proportion of votes cast was not larger than in the rest of the State; and when in eight counties there was not even a show of election, it would be doing violence to language and to justice to call the result an expression of the popular will, or the formalities which took place an election by the people of the State.

Whether we regard it, therefore, as a question of the lawfully established day, or of a real and general election *de facto* by the people, it cannot be said that a Representative to the Forty-fifth Congress was chosen in Colorado on the 7th of November.

The opinion of the last class of people referred to by the secretary of state in his testimony, as quoted above, seems to me to be the true one, and I believe that "the general assembly of Colorado must provide by law for the holding of an election for the Forty-fifth Congress," and that neither contestant nor contestee is entitled to the seat.

I would therefore respectfully report the following resolution, which, at the proper time, I shall offer, to wit:

Resolved, That no valid election has as yet been held in Colorado for Representative in the Forty-fifth Congress.

J. D. COX.

JESSE J. FINLEY vs. HORATIO BISBEE, JR.**SECOND CONGRESSIONAL DISTRICT OF FLORIDA.**

Contestant charges that returns were forged and false, that the election officers were guilty of frauds, and counted too many votes for contestee, and threw out entire polls in some instances. Contestee claims that illegal votes were cast for contestant by non-registered persons.

Held, That where the result at a poll is shown by the returns to be false and fraudulent, and it is impossible to ascertain from the other evidence in the case the true vote of said poll, the vote of such poll must be entirely rejected.

Where persons vote without challenge, it will be presumed that they were entitled to vote, and that the sworn officers of the election who received their votes performed their duty properly and honestly.

Where it is provided in a registration law that the commissioner shall "examine the list of registered voters, and erase therefrom the names of such persons as are known, or may be shown to their satisfaction to have died or ceased to have resided permanently in the county, or otherwise become disqualified to vote"; and it is further provided that "if the voter, on offering to vote, in case his name is not found on the registration list, will take an oath that his name has been improperly struck off, and shall take the oath required to be taken by persons whose right to vote shall be challenged, such person shall have the right to vote"; and such person does vote, having all the other qualifications of a voter, and his name is found on the poll-list, his vote will be presumed to be legal until the contrary be proven.

The House adopted the majority report, February 20, 1879.

FEBRUARY 5, 1879.—Mr. COBB, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom were referred the papers relating to the contested-election case in the second Congressional district of Florida, having had the same under consideration, submit the following report:

The second Congressional district in the State of Florida is composed of the counties of Alachua, Baker, Brevard, Bradford, Clay, Columbia, Duval, Dade, Hamilton, Madison, Marion, Nassau, Orange, Putnam, Suwannee, Saint John's, and Volusia.

The record in this case covers 972 pages, the brief of contestant 139 pages, and the brief of contestee 99 pages, making in all 1,190 pages of printed matter which your committee has had to examine, and which has been done with great labor.

In the general election held in this district on the 7th day of November, 1876, Jesse J. Finley and Horatio Bisbee, jr., were voted for to represent said district in the Forty-fifth Congress. And the question is, which of these gentlemen is entitled to the seat? According to the

returns of the precinct officers of the several counties in said district the vote was as follows :

Counties.	Finley.	Bisbee.	Mustard.
Alachua.....	1,255	1,972	15
Baker.....	238	143	
Brevard.....	111	56	
Bradford.....	706	199	
Clay.....	315	126	
Columbia.....	901	717	
Deval.....	1,468	2,331	4
Dade.....	5	8	
Hamilton.....	614	329	
Madison.....	1,082	1,521	
Marion.....	962	1,548	
Nassau.....	670	794	
Orange.....	926	194	
Putnam.....	617	579	
Suwannee.....	629	456	
Saint John's.....	508	331	
Volusia.....	474	172	
Total vote for each.....	11,481	11,476	

This return was acted upon by the canvassing-board of each county and the State board of canvassers. And after making several changes, which are not necessary to be mentioned here, the certificate of election was issued to the contestee, and he was sworn in and now occupies the seat in this House from the second district of Florida.

The contestant within the legal time filed his protest and notice of contest, averring that the board of State canvassers had been guilty of gross frauds in canvassing the votes of said Congressional district, making up false statements by which the votes of said counties were, or some of them, falsely stated, and that the certificate of election was wrongfully given to the contestee, &c.

These averments need not be noticed by your committee, as they do not affect the merits of the case which is now under consideration. The *prima-facie* case having been settled by the House, the committee has nothing to do with the certificate; but the contestant makes averments in his notice of contest which reach the merits of the case before us, the substance of which we will hereafter give, not wishing to incumber this report with a copy of them in full. The notice of contest and the answer thereto are not as carefully drawn as they should have been, but in the opinion of your committee the allegations therein are sufficiently broad and specific to embrace all the evidence in the record which your committee deem necessary to consider in reaching a correct decision on the merits.

The substance of the allegations in the notice of contest which we consider material may be briefly stated as follows:

1st. That the returns of the election at the precinct of Archer No. 2, in the county of Alachua, in said Congressional district, were forged and false; that about 219 votes were falsely and fraudulently added to the vote of contestee by the election officers of said precinct and returned, which were canvassed and counted by the county and State boards of canvassers.

2d. That the election officers who conducted the election at Archer precinct No. 2, in Alachua County, in said district, were guilty of fraud in conducting said election, and made false and forged returns of the same, thereby making it impossible to arrive at the true vote of said precinct, and demanding that the vote of said precinct be excluded.

3d. That the election officers, in canvassing the vote for Congress in said district, illegally and wrongfully excluded therefrom all the votes cast at each of the precincts of Darbyville and Johnsonville, in the county of Baker, and demands that they be counted.

4th. That the election officers, in canvassing the vote for Congress in said district, illegally and wrongfully excluded therefrom the entire poll at Jasper precinct No. 2, in Hamilton County; that the true number of votes cast at said precinct were 504, of which 320 were cast for contestant, and 184 for contestee, and contestant demands that the same be counted.

5th. And contestant asks that a true count of all the votes be made as far as the same can be done under the evidence, and insists that if this is done it will entitle him to the seat.

The contestee in his answer sets up a general and special denial, and avers, by way of counter charges, threats, intimidation, violence, and repeating at various polls in the district upon the part of the political friends of the contestant, and also that a large number of illegal votes were cast for contestant by non-residents, persons convicted of crime, minors, non-registered persons, and foreign-born persons, who did not at the time of voting present their certificate of naturalization, or a certified copy thereof, or a duly sealed and certified copy of their declaration of intention to become citizens of the United States.

Your committee, after this summary of the pleadings, will examine the questions of law and facts involved in the issues, and, as the tabulated statement given above arranges the counties in alphabetical order, your committee will consider the questions arising in the counties in the same order; and,

1st. As to Alachua County, Archer precinct No. 2: It is alleged by the contestant that the election returns from this precinct should be rejected, and this we believe is conceded by contestee, for the reason that said returns were forged, and do not show the true vote. The returns from this precinct, made by its officers, therefore, are to be considered out of the case.

The contestant further alleges and insists that not only the returns of this precinct must be rejected, but that the entire vote of the same must be excluded from the count, for the reason that the evidence is not such as to enable your committee to determine correctly what the true vote at this precinct was. But he insists further that if the committee conclude that the vote of said precinct should be counted, in that case the vote must be counted as follows:

For contestee	180
For contestant	141
Contestee's majority	39

Because he claims that the evidence tends more strongly to support this conclusion. Your committee are fully aware of the importance of the decision upon these questions, for upon it hinges the final judgment in this case. The evidence in regard to this poll is very voluminous, covering nearly 300 pages of the record, the result of the examination of over 300 witnesses of the parties. It being conceded, as we have already said, that the returns must be thrown aside, on the ground that they are false and forged, and your committee agreeing with that view, we are compelled to look to the other evidence in the case, in order to ascertain if possible what was the true vote. If the true vote can be ascertained with reasonable certainty, it must be counted. If it cannot be so ascertained and determined, then the entire vote of the precinct

should be thrown out, and nothing counted for either contestant or contestee.

The evidence proves that Green R. Moore, R. H. Black, and Floyd Dukes were the inspectors, and Thomas H. Vance the clerk, of the election held for Congress at Archer precinct No. 2, in Alachua County.

Green R. Moore testifies that there was a poll-list kept, and thinks the names of all who voted were put down on the list; says Vance kept it, who was clerk; says he was present when the polls were closed, and says that there was a paper there which was signed by the inspectors in blank for the returns; it was not filled out when signed. He says they counted the votes, but got in a hurry, as it was late, and did not fill up the returns with the number of the votes, but just signed the blank return. Does not know whether the return so signed was ever filled up or not. He says Thomas H. Vance took charge of all the papers. He took all the papers under his arm, among them the returns of said poll. He says the ballots were first strung on a string and then said Black corrected them. He, witness, held the ballots up and Floyd Dukes strung them. They were then put in the ballot-box and left strung. R. H. Black locked the box and gave him, witness, the key, and took charge of the box. The returns were not put in the box. Not certain the box was locked. Box fastened together, he thinks, with screws. He says that after the poll was closed and the ballots counted the result was publicly announced by R. H. Black. He is certain of this fact. Black announced that Stearns had received 180 votes, and that Drew had received 136 votes. Stearns was the Republican candidate for governor, and Drew the Democratic candidate. He says that Black announced that there were 318 votes in all cast, but he says 2 of these were destroyed because they looked like two tickets were folded together. He says that Black announced the true vote and gave it to Samuel C. Tucker. Says he is positive that there was not more than 318 votes polled there that day. This number did not agree with the number of ballots strung and counted and put in the box. Black counted 277 tickets in all that were put in the box. Says the result was ascertained by counting the poll-list and tally-sheet kept by the clerk, Vance. The poll-list and ballots did not agree. The poll-list showed 318 names, two of which were not counted because two of the ballots were folded together, and there were only 277 ballots. Ballots were counted as they stood on the poll-list. Says Black and Vance took the returns and ballot-box to Black's house. He lived in Archer. "When I next saw them after they left the voting place, I saw them at Black's house. They kept the returns and box there from about 11 o'clock p. m. until next morning about 3 or 4 o'clock, when they took them to Gainesville, the county seat of Alachua County. I went with them." When they got to Gainesville witness says he stopped at a fire in Court House Square, and Black took the box off in the direction of Capt. L. G. Dennis's house in Gainesville. After this witness heard Dennis at his own house tell Black to take the box away, as there had been one box thrown out by being at his house. This was between nine and ten o'clock the morning after the election. Black got to Dennis's just at daylight. Witness says Dennis was a noted Republican politician at the time, and was a candidate for the State legislature. Witness says the key to ballot-box was a common key, easily duplicated. Key-hole not sealed. They had eight keys that fitted the box. Says that Black and Dukes went off from the polls during the voting and he, witness, and Vance staid. When they returned witness and Vance went out for dinner together. Witness says that Dukes could neither read

nor write; that he voted the Democratic ticket. Witness, Black, and Vance voted the Republican ticket.

This is the substance of this witness's statements. (See Record, pp 82-88.)

Samuel T. Fleming testifies that he stood at the polls at Archer, No. 2, and took down the names of all persons who voted as they voted; says he was there all day except about 20 minutes when voting was suspended for dinner; says he kept a list of all who voted from the outside of the room; the box was inside the room near window; says the original list kept by him to secretary of state of Florida, "but has a correct copy of it with exception of one name"; and here witness exhibited the copy, which was made part of his deposition, without objection. This list contains the names of 305 persons who, he says, voted; says he went there to take down the names of all persons who voted at that poll; did it at request of Democratic executive committee, and is positive he took down on his list the name of every person who voted from outside room that day; says he was well acquainted with the voting population who resided about the poll, and with the exception of four or five knew each man personally who voted there on November 7, 1876; says he knows that 500 votes were not polled at that poll that day; says none voted from inside of house but the inspectors. (See Record, pp 89 to 93.)

Wade A. Gieger says he was at Archer precinct, No. 2, on the day of election; there before polls opened; there all day except during recess for dinner, and once after that about 20 minutes. Saw Fleming standing near the window taking down the names of the persons voting; was there when polls closed. Heard the announcement for governor but not the other candidates; R. H. Black announced from the window, in an ordinary tone of voice, that Stearns had received 180 and that Drew had received 136 votes. Witness went to Black's house and tried to get Black to take the box back to the house where the voting had been done and have it guarded with box No. 1; he feared Black would tamper with the ballots. Black told him before the election that he intended to pack the box if he had a chance; Black then thought witness was a Republican as he (witness) had been attending Republican meetings and had avoided Democratic meetings and he was understood to be a Republican; was well acquainted with Black, and thinks he was capable of tampering with a ballot-box.

George Blick testifies that he went to Archer, No. 2, on the day of election; was not there all the time. "I was inspector at box No. 1 which was in same building with box No. 2, being in the other end of the building; was at box 2 two or three times during the day, perhaps oftener." When they got through counting Black or Vance announced the vote; the announcement was that Stearns, for governor, had received 180 votes, and that Drew had received 136 votes, and then witness went into the room where poll 2 was, and asked the inspector to let him see the tally-sheet; they then told witness that Stearns had received 180 votes and Drew 136 votes, and that there was very little difference between their vote and the other candidates. Black and Vance took box off to Black's house; witness went to Black's house that night and asked him to let witness put box No. 1 with his ballot-box No. 2 in his house, and let witness sit there with him and guard the boxes until morning, when they would carry them to Gainesville. "He refused, and said he could take care of his box if I (witness) could of mine"; witness then left. Witness was at box No. 1 when announcement was made, in same building as box No. 2; there was just a partition between and two

planks were off of that, and the door between the two rooms was open. The building was about 36 feet long. (See Record, pp. 98 to 100.)

Irving E. Webster, clerk of the circuit court of Alachua County, testified that the ballot-box of Archer, No. 2, was delivered to him about noon the next day after the election; the key was delivered early in the morning. (Record, pp. 103 to 109.)

Samuel C. Tucker testified that he was sheriff of Alachua County, and resided there twenty years; spent most of his time on election day at Archer, No. 2; was present when tally-sheet was being made and when it was added up; was near enough to see all that was done; did not keep a regular tally-sheet of his own, but counted over the tallies with Vance and put down in a memorandum of his own the total footings-up of the tallies. While doing this witness would ask Vance if each result put down by him on this memorandum was correct, and each time Vance would say yes, they agreed with his (Vance's) own figures. Witness said he did not have the original memorandum, but had a true copy made by himself, which he produced, and then was requested to state its contents, which he did, as follows:

As shown by this memorandum of mine: For governor, Drew received one hundred and thirty-six (136) votes; Stearns, for governor, received one hundred and eighty (180) votes; for lieutenant-governor, Hull received one hundred and forty-one (141) votes; Montgomery, for lieutenant-governor, received one hundred and seventy-six (176) votes; Finley, for Congress, received one hundred and forty-one (141) votes; Bisbee, for Congress, received one hundred and eighty (180) votes; King, for State senator, received one hundred and thirty-six (136) votes; Walls, for State senator, received one hundred and eighty-one (181) votes; for assemblyman to State assembly, Sparkman, Democrat, received one hundred and thirty-eight (138) votes; Dennis, Republican, received one hundred and eighty (180) votes; Dudley, Democrat, received one hundred and forty-one (141) votes; Cessna, Republican, received one hundred and seventy-eight (178) votes; for Presidential electors, the Democratic electors received each of them one hundred and forty-one (141) votes, the Republican candidates for Presidential electors each received one hundred and seventy-eight (178) votes.

Witness says that after footing up the tally-sheets Black announced the result through the window to the crowd outside. The announcement was made in a loud tone of voice as to vote for Stearns and Drew, particularly loud as to Stearns; he announced that Stearns had received 180 votes and Drew 136 votes. Witness requested him to make an announcement as to the other candidates, but he replied that it was not necessary as there was only a difference of three or four votes. After the counting was over the hole in the box where the ballots were put in was sealed up; box was not sealed over the key-hole or anywhere else. In about fifteen minutes after the canvass was over witness saw the box at Black's house; it was not then sealed anywhere else than on top. Witness went to Black's house to get him to seal the box more securely and over the key-hole, and also between the body and the cover or lid of the box, as there was opening enough there with the box locked to insert ballots through, but Black refused to seal it any more than over the hole in the top. Black was the inspector who was to take the box to Gainesville, the county seat, to make the returns. (Record, pp. 109 to 112.)

Floyd Dukes testified that he was one of the inspectors of election at Archer, No. 2, on November 7, 1876; he strung most of the ballots on a string when they were counted. Green R. Moore strung some of them; they were all strung by witness and Moore. After they were strung they were counted over by Black and put back in the ballot-box. R. H. Black, one of the inspectors, read off names from the ballots as they were first taken out of box, and Vance, the clerk, kept the tally-sheets. After the counting was all over, Black or Vance, one, an-

nounced that Stearns had got 180 votes and Drew 136 votes; there was something said about the other candidates getting about the same as governor, but witness does not recollect just what it was. Black told witness that he had to sign a paper, and he wrote witness's name, he supposes, and witness touched the pen to make his cross-mark. Witness says he thought that the paper he signed at the time did show that Stearns had received 180 votes, and that Bisbee had received about the same, for Congress. First heard from Vance, the clerk, that vote for Stearns was 180, and 136 for Drew. (See Record, pp. 112 to 114.)

Jesse I. Griffin testifies that he was at Archer precinct, No. 2, on the election day, November 7, 1876. Saw Samuel Flemming there that day at the polls, taking the names of persons as they voted. He commenced as soon as polls were opened; he was writing names on blank sheet paper with pencil. He left and went to dinner between 12 and 1 o'clock. Distance about thirty yards. Witness went with him. He was gone about twenty minutes. Witness thinks when he left he turned the paper and pencil over to Mr. Edge. When Flemming returned he took the paper and pencil again. Thinks they took recess for dinner; did not have any announcement to that effect. Mr. Edge did not take down the names of any one while Flemming was at dinner. (See Record, pp. 116 to 118.)

Frank Edge testifies that he was at Archer, No. 2, on election day, in 1876; was at this poll the greater part of the day. Saw Samuel Flemming there. He was keeping a list of those who voted. He left the poll about one o'clock and went over to his mother's to dinner. Before he started he handed witness a piece of paper and pencil and told him that if any person voted while he was at dinner to take down his name; he was absent, after handing witness the paper, some fifteen or twenty minutes. There were no votes cast while Flemming was gone. Witness heard the announcement of the result of the vote. It was made by Sam Tucker and R. H. Black. They announced that Stearns received 180 and Drew 136 votes. (Record, pp. 123 to 125.)

The foregoing is the substance of the oral evidence given by the principal witnesses tending to prove that the vote at Archer precinct, No. 2, was, for contestant, 141 votes and for contestee 180 votes; and

The following is the substance of the oral evidence given by the principal witnesses tending to rebut the foregoing evidence and prove that the theory that contestant got 141 votes at said precinct and the contestee got 180 votes is not correct.

Thomas H. Vance testified that he was clerk of the election at box No. 2, in Archer, at election on November 7, 1876; voted there the straight Republican ticket; was there from the time the polls were opened until the result was known, except about ten minutes when they took recess for dinner. Did not count the ballots, but kept the tally-sheet. When the polls were closed the ballots were counted. Witness counted the names on his poll-list; counted 535 names; counted the votes cast for each candidate. Black counted the ballots, and witness asked him how many ballots he found. He said 535, which he had carefully counted over twice. Witness says that at the close of the count an announcement was made of the vote; that the Republican candidates had 399 votes and the Democratic candidates had 136 votes. This announcement was made two or three times at the window. There was a certificate of the result made, and witness says he signed it. Then follows this question and answer:

Q. Tell me, if you can, what vote that certificate of result showed for each candidate?—A. For Presidential electors, Frederick C. Humphries received three hundred

and ninety-nine votes; Charles Pearce received three hundred and ninety-nine votes; William H. Holden received three hundred and ninety-nine votes; Thomas W. Long received three hundred and ninety-nine; Wilkinson Call received one hundred and thirty-six votes; R. B. Hilton received one hundred and thirty-six votes; Robert Bullock received one hundred and thirty-six votes; and J. E. Yonge received one hundred and thirty-six votes. For members of Congress, second Congressional district, Horatio Bisbee, jr., received three hundred and ninety-eight votes, and Jesse J. Finley received one hundred and thirty-seven votes. For governor, Marcellus L. Stearns received three hundred and ninety-nine votes; George F. Drew received one hundred and thirty-six. For lieutenant-governor, David Montgomery received three hundred and ninety-seven votes, and Noble A. Hull received one hundred and thirty-eight. For State senator, Josiah T. Walls received three hundred and ninety-nine votes, and Thomas F. King received one hundred and thirty-six. For members of the assembly, L. G. Dennis received three hundred and ninety-eight; W. K. Cessna received three hundred and ninety-seven; P. B. Dudley received one hundred and thirty-eight; and J. M. Sparkman received one hundred and thirty-seven.

Says the inspectors, R. H. Black and Green R. Moore, signed their names to the first return. Black signed Floyd Dukes's name for him, and Dukes made his mark, for he could not write. The second return R. H. Black signed first and asked Green R. Moore to sign his, and Moore said, "Black, sign it for me, for, damn it, my finger is sore." Black said to Floyd Dukes, "Daddy, I'll sign this for you—you can't write," which he did, and Dukes made his mark. Witness says that he has seen the list kept by Flemming at the poll on election day at Archer, No. 2, and had examined it. Said he saw persons vote at that poll on election day whose names are not on the list, and names Frank Dausy, Arch. Brown, Jerry Allen, Jesse Brown, and one other by name of Cooper. On cross-examination by contestee, this witness says he is positively certain that the number of votes stated by him in his examination-in-chief is correct; then these questions and answers follow:

Q. Are you positively sure that you counted five hundred and thirty-five names on the poll-list, as you have testified in your examination-in-chief?—A. I am; I counted it twice to be certain.

Q. Are you positively certain that the number of votes, as stated by you in your examination-in-chief as having been given to each candidate and as the result of said election at box No. 2, Archer, was the true result of said election at that place, and that the number of votes so stated by you were certified by the inspectors of the election at said box, and by yourself as clerk, as you have stated in your examination-in-chief?—A. No; I can't say that, for there was a mistake in making up the returns in the vote for member of Congress and for State senator; all the rest, to the best of my knowledge and belief, are correct.

Q. Were the number of votes stated by you in your examination-in-chief to have been given to the different candidates, the number set out in the certificate of election, given by the inspectors with yourself as clerk?—A. There was a mistake as to member of Congress and State senator.

Witness then says that but one announcement was made at the poll, and that Black made, and which he has already stated; says he does not know whether Frank Dansey's name was on the poll-list or not, for he don't know whether the poll-list is in existence or not; says Black took charge of the box and Moore of the key; says he accompanied Black while in charge of the box; went with him to his house, and from there to Gainesville; went by a special train. The regular train was due at Archer at 9½ o'clock a. m., and the special train went up to Gainesville about 2½ or 3 o'clock a. m. Was with Black all the time. Says they (witness, Black, and Moore) arrived at Gainesville about 4½ o'clock, or a little after, and went to the court-house. Found clerk's office locked. Then they went from there to Vance's house in Gainesville, and staid there with ballot-box until clerk's office opened. After office opened, witness went with Black, and he delivered it to the clerk of the court; and witness is not certain whether he or Black handed him the returns. Clerk said Moore had not delivered to him the key. Says he was not

with Black all the time; left him in witness's house twice to go to see if clerk's office was open. Thinks Black left him at Black's house when Black went to get some whisky. Mr. Harvard and J. R. Miller wanted Black to take the box and leave it with box No. 1 till next morning, until the train came along. Black refused to do so. Says the box nor the returns were tampered with while witness and any of the inspectors were together, from the time the polls closed until delivered to the clerk of the court. Witness says there was a mistake in the returns of the vote for Congressmen. Horatio Bisbee, jr., received 398 votes, and on the returns it is 399; Jesse J. Finley received 137 votes, and on the returns it is 141 votes; which, he says, makes a difference of 4 votes in favor of Finley which ought not to be there. Says he had left the room where the ballot-box was, about ten minutes before the train came, to go in to an adjoining room to go to bed, and was in the act of going to bed when he heard the train coming. Witness and Black took ballot-box to the clerk's office and delivered it to the clerk. Box was placed under witness's bed while at his house. He says that the parties who wanted Black to take the box where box No. 1 was and stay there with it, also wanted Black to let Mr. Blitch bring box No. 2 up to Black's house and leave it with Black, and have Blitch, who was inspector of box No. 1, stay with him. Black said he had nothing to do with box No. 1; the inspectors of box No. 1 must take care of their own box, and he would be certain to take care of box No. 2. (Record, 328 to 334.)

R. H. Black testifies that he was one of the inspectors of the election at Archer, No. 2, on November 7, 1878; was present all day at the polls excepting the time he went to dinner, which was about ten minutes; was also absent at box No. 1, in another part of the building, about ten minutes, in company with Mr. Vance, the clerk, leaving Mr. Dukes and Moore at box No. 2. Dukes was a Democrat, Mr. Moore a Republican. Moore enjoyed the confidence of the Republican leaders of the county. The vote at Archer precinct had always been largely Republican. The Republican vote in 1872 was over 200 and the Democratic vote was 40. The Democratic vote in 1874 was not over 30. Republican vote was nearly 300. The Republican vote has gradually increased since witness lived in Archer. A large body of government land in that section has been homesteaded by colored people. Republican managers of the county anticipated a large increase, hence they established two boxes where there had been but one at Archer. Their anticipation in that respect was realized. Republicans were well organized. There were in the different settlements near Archer five Hayes and Wheeler clubs. The roll of these clubs in the aggregate numbered about 700, all of whom intended to vote the Republican ticket. At the election, witness says at box No. 2, on November 7, 1876, 399 Republican to 1.6 Democratic votes were polled. Total vote 535. Was surprised to find the number of Democratic votes in the box, as he had observed the vote through the day. Could not recollect over ten Democrats who had voted through the day at box 2, and there were not more than 20 Democrats living in the neighborhood, and most of them had voted at box 1. He says he noticed no irregularity, illegality, or fraud; saw the ballots taken from the box and assisted in the count, and announced the result as stated above. The return was made in accordance with the vote found in the ballot-box. It was signed by all the inspectors and the clerk; no objection made. Moore and Dukes did not count the vote. They did not count the names on the clerk's list, nor number checked on poll-list. There was a Democrat present by the name of Flemming, who pretended to keep a list of the names of those

who voted. He, Flemming, was not present at poll during entire day; was absent twice to witness's knowledge. Witness never said at any time that the vote was different from that announced at the polls. Says Democrats attempted to obtain possession of the ballot-box from him after the election was over. They demanded it from him in his house. The party who demanded it consisted of about nine or ten persons. The box was in his keeping; delivered it the following day and got a receipt for it. Moore had the key.

After the return was rendered, and before the county canvass took place, I was approached by Dr. E. D. Carew, a prominent Democrat in the precinct of Archer, who asked me if I didn't want to sell a piece of land that I owned at Archer. I told him I did. He asked what it was worth. I told him \$300. He said he knew of a gentleman that wanted to buy it. He took his pencil from his pocket and wrote some figures on a newspaper, which I found to be an offer of \$600 for my place, on condition that I would join Moore in his statement that the vote cast was at Archer, box No. 2, as follows: 180 Republican and 136 Democratic. Moore had made such a statement in the form of an affidavit. (Record, 307 to 308.)

Irving E. Webster, whose evidence has heretofore been noticed, testifies that the box of Archer, No. 2, was brought to him by Black on the 8th November, 1876. The returns were in an envelope and sealed up; box had a piece of paper over the hole in the cover, and sealed around the edges with sealing-wax; was also a similar piece of paper over the key-hole; don't remember whether the poll-list was in the box or not, but it was returned to witness; the registration-list was in the box; poll-list may have been sealed up with the returns; says the poll-list was extracted from his office between the time of the county canvass and the session of the House committee (meaning the committee of this House who visited Florida during the last session of the Forty-fourth Congress). Kept the poll-list in his safe; it was an iron safe, and he kept it locked. Did not miss the poll-list until called for by the House committee. (See Record, 344 to 347.)

Frank Danzy testifies that he was at Archer precinct, No. 2, November 7, 1876, and was the first man who voted at that poll on that day. (Record, 230-232.) Three hundred and eight colored persons testify that they voted at this poll, and that they voted the Republican ticket, including Bisbee. (Record, 130-340.)

As this committee has already said, the foregoing contains the substance of the oral evidence of the principal witnesses in regard to the vote of Archer precinct, No. 2. We do not desire, however, to be understood as saying that there are no other witnesses whose testimony is important; but, upon the contrary, there are many more witnesses whose statements tend to throw light upon the questions involved. In order to understand the case, the whole of the evidence in the record in regard to this poll must be read carefully and studied. The committee will now call attention to some of the important questions.

1st. We will consider the question of fraud on the part of some of the election officers of this precinct. It will be remembered that R. H. Black, Green R. Moore, and Floyd Dukes were the inspectors, and Thomas H. Vance was the clerk, at said poll. That there was fraud committed by way of forging the returns by the officers of this precinct there cannot be any question, and is admitted by the contestee. But it is necessary to briefly review the evidence in order to come to a correct conclusion in regard to how the vote of the precinct shall be treated.

The evidence proves that the election at this precinct was peaceable and orderly so far as the voters were concerned, as much so as usual at such places. After the polls were closed the votes were counted, and the result was determined by the election officers. The ballots were put

in the box, and it was locked, and the key given to Moore and Black, and Vance took the returns or whatever papers, if any, were signed by the inspectors and clerk, and the poll-list and tally-sheets, and took them to Black's house in the village of Archer, but a short distance from the place where the election was held. It must be borne in mind that it is proven that Black, Vance, and Moore were all Republicans. Soon after it was known that Black and Vance had taken the ballot-box to Black's house the Democrats became alarmed for its safety, and they went, as the evidence shows, and made a request of Black at his house that he take the ballot-box down where box No. 1 was being kept by Mr. Blitch, who was inspector of the election at that box, and whose custody it was then in. But he, Black, scornfully refused to do so. They then requested him to allow Mr. Blitch to take box No. 1 up to his house and place it with box No. 2, and he and Blitch to remain there together in charge of the two boxes until the next morning, and then take the train and take them to Gainesville, the county seat, and make the returns to the clerk. This proposition Black also refused in the same manner as the first. Both these propositions were perfectly fair, and in no way calculated, if an honest man, to make him feel that his motives were impugned in a matter of so much public importance—one upon which the election of a President of a great nation might depend. And if he had been disposed to have acted honestly and fairly in his official duty he would have consented to such a fair and reasonable request. But dishonestly intending to carry out his fraudulent and corrupt purpose of forging the returns of Archer precinct, No. 2, he and his equally corrupt and ever-faithful friend and coconspirator in the execution of this crime against the purity of the ballot-box remained alone at Black's house in the sole custody of this box until about 3½ o'clock next morning; when, at this very unusual hour, they took an extra train, which happened by accident to come along at that time, and went to Gainesville to make the return instead of waiting until 9½ o'clock in the morning and then take the regular passenger-train, which would have carried them to Gainesville in ample time to make the return and before, in fact, they did make it; for the evidence of the clerk shows it was not made until 12 o'clock that day, and after box No. 1 had been returned by Blitch, who left Archer on the 9½ train. When they got to Gainesville they pretend to say they went to the clerk's office to make the return, it being but half after four o'clock in the morning, a very unusual hour indeed for men to undertake to transact official business with a public officer; but not finding the clerk in, they went to Vance's house, where he, Vance, resided in Gainesville. This is Vance's statement. And there Black put the ballot-box under the bed, and laid himself across the bed, and perhaps went to sleep in order to its more perfect security, as he claims to have been very watchful of it.

But Green R. Moore, a Republican in good standing, who accompanied Black and Vance on their mission of fraud to Gainesville on their extra night train with the box key in his pocket, betrays these confederates. He swears that Black left him near the court-house in Gainesville, and went with the ballot-box in the direction of the residence of L. G. Dennis, who lived in Gainesville, and who was a leading Republican and a candidate for the legislature, and who was very officious in regard to the election at this poll, as the evidence shows. He was the leading member of the board of commissioners of Alachua County, which, under the laws of the State of Florida, had the power to appoint and did appoint the said Black and Green R. Moore inspectors at said poll, both being Republicans, and the third inspector was Floyd Dukes, who was a Demo-

erat. But the evidence shows that he was an old colored man that could neither read nor write, thus securing the election of a Republican for clerk at said poll. And when the election board met and was about to select a clerk, it was found that this faithful Vance was present. He had, by accident, gone all the way from Gainesville, where we have already stated he lived, and Black and Moore at once selected him as clerk. No, this was not accidental, but a part of the fraudulent programme which had been marked out by L. G. Dennis, Black, Vance, and others, to tamper with the ballot-box at Archer No. 2, in the interest of their political friends. And this they accomplished to the extent of somewhere between two and three hundred votes, by causing their false and forged returns to be canvassed and counted for their political friends. That Black and Vance went to Dennis's house, or saw him the morning they got to Gainesville with the ballot-box and advised with him, your committee have but little doubt, and that his direction was followed in the completion of the perjury and forgery. However this may be, the double crime was committed. The Republican county clerk, with whom the box and returns were placed under the law, swears that all the time the county board of canvassers were canvassing the returns from this precinct, it appeared to him from the face of the returns that fraud had been committed in favor of the Republican candidates. Yet the county canvassers, with the fact of forgery being patent upon the face of the returns from this precinct, counted the votes thus returned through this perjury and forgery.

Another fact not to be overlooked is that the Congressional committee, which was sent to Florida just before the so-called electoral count, searched for these returns of this precinct, but they could not be found. The clerk of the circuit court, in whose custody they were placed, swears that this was the first knowledge he had that they were missing. He says, however, that he kept them in an iron safe, and carried the key, and still he pretends to say that he does not know what became of them. At all events they are not to be found; and in the opinion of your committee they were destroyed by some of the conspirators to cover up their crime. The poll-list, tally-sheet, and the return belonging to said poll are gone.

Your committee is clearly of the opinion from the evidence that the election at this poll is tainted with frauds, the returns false and forged, whereby they showed that contestee got some two or three hundred more votes than were actually cast for him, which were canvassed and counted for him by the returning-boards.

Your committee is therefore compelled to go behind these fraudulent returns and examine the evidence in the case, and ascertain the true vote, if it can be done, from the evidence.

When the polls were closed and the votes counted, several witnesses testify that Black publicly announced from the window through which the ballots were received that Stearns, the Republican candidate for governor, had received 180 votes, and Drew, the Democratic candidate, had received 136 votes, and that the other candidates, Republican and Democratic, did not differ from their respective candidates for governor more than three or four votes. This is one of the theories presented by contestant; and it is argued with much force, and we must concede that if the vote of this precinct is to be counted at all, the conclusion that the contestee received 180 votes and the contestant received 141 is the most reasonable one which can be drawn from the evidence.

Green R. Moore, one of the inspectors, swears that there were, according to the tally-sheets and the poll-list, 318 votes cast at this poll, and that

two of those being folded together were destroyed, leaving but 316; and he is supported substantially by Floyd Dukes, Gergen Blitch, Tucker, and Edge; they say that Black publicly announced the votes as stated by Moore.

Blitch testifies that the announcement made by Black of the result agreed with the tally-sheets kept by Vance, the clerk.

Tucker, who was sheriff of the county at the time, swears that he counted over the tallies with Vance, and put down the total footings of the vote for each candidate in a private memorandum of his own, and as he did so, would ask Vance if each was correct, and Vance answered it was. And Tucker makes a copy of this memorandum a part of his evidence, which shows that contestee received 180 votes and contestant received 141.

Flemming swears that he stood at this poll with pencil and paper all day, except about twenty minutes when he was at dinner, and took down the names of every person who voted from the outside the room occupied by the election board. He says that no voting was done while he was absent, and he is corroborated in this statement by Edge, with whom he left the pencil and paper while he went to dinner, with instructions to take down the names of all who voted during his absence. Edge says no one voted during Flemming's absence. Flemming also swears that he was acting under the direction of the Democratic executive committee in taking down the names; that he was requested to attend the poll and do so. And he says that there were but 305 votes polled from the outside of the room in which the election was held. If to this is added the four votes which it is reasonable to suppose were cast by the officers of election in the room, we have 309 as the total number according to his evidence. He also makes a copy of the list of names so kept by him a part of his evidence.

This evidence, together with the other evidence in the record which supports it, if standing alone, would strongly tend to sustain the theory that there were about 318 votes cast, or that contestee received 180 and contestant received 141 votes. The vote, even under this theory, cannot be exactly ascertained, if there was no other evidence in the record in regard to the number.

But Vance, the clerk, swears that he kept the tally-sheet, and that there were 535 names on the poll-list, which he carefully counted twice, and that an announcement was publicly made that the Republican candidate received 399 votes, and the Democratic candidate had received 136 votes. He says this announcement was made two or three times at the window. Then a certificate was made of the vote and signed by the inspectors, and by himself as clerk, and that this certificate showed that contestee received 398 votes, and contestant 136 votes, and then testifies as to the manner in which the duplicate certificates were signed (see his ev.). He afterwards qualifies this statement by saying that there was a mistake in the certificate as to the vote for Congress and State senator, and that all the rest were correct. Then he says that but one announcement was made at the polls, and that was made by Black, contradicting his first statement upon this point. Again, he says the returns for Congress showed that Bisbee received 399 votes and Finley 141, but that this was a mistake; that their true vote was 399 and 137, respectively, which he says makes a difference of 4 votes between the true vote and the vote as shown by the returns.

Black swears that he was one of the inspectors of this election; that the Republican vote was 399 and the Democratic vote was 136; total

vote, 535; and that he announced that as the vote, and that the return was made in accordance with the vote found in the ballot-box.

Frank Danzy swears that he was the first man who voted at that poll; that he voted at the window from the outside. It will be observed that Danzy's name is not on Flemming's list. Danzy is corroborated by other witnesses on this point, which tends to weaken the force of Flemming's list.

Three hundred and eight colored witnesses swear that they voted the Republican ticket at that poll. Their evidence shows that but very few of them could either read or write, most of them making their cross to their depositions. They had, of course, to rely upon others for information as to the kind of tickets they voted. They may have been deceived, many of them, or they may have been induced, some of them, to make the statements under oath which they did; it is not for your committee to say; but it is enough to say that their evidence greatly tends to increase the doubt as to what is the true vote of this precinct. It cannot be true that there were 535 votes polled at this precinct or box, and the statements of these last-named witnesses are in harmony with no other theory of the case. The evidence shows that there was but one box or place of voting at Archer until 1876; that box No. 2 was established for the election of that year for the first time. It further shows that the entire vote in 1874 at that precinct was only 318, just two votes more than Moore says was counted by the inspectors at box No. 2 in 1876; and if you add the votes cast at box No. 1 in 1876, about which there is no controversy, to the vote at box No. 2, as stated by Moore, you have a total vote of 468 at this precinct in 1876, an increase of just 150 votes—quite a large increase for two years. But if you take the statements of Black and Vance as to what the vote was at box No. 2 and add that to the vote of box No. 1, you have a total vote of 690 in 1876—a net increase over the vote at that precinct in 1874 of 372 votes, more than two to one; a very extraordinary increase in so short a time for a country precinct. And this increase is not satisfactorily accounted for by the evidence. Black undertakes to explain it by saying that there was a large body of government land in the neighborhood which was homesteaded by colored people since 1874. That is a good way to account for the increase; but he is contradicted in this statement by Danzy and several other witnesses, who swear that there had not been but very little increase in the population since 1873. This theory of the case and the evidence of Black fall to the ground when measured by the evidence. The theory of contestee, that the Democratic vote at this precinct was greatly in excess of what it should have been, and must, therefore, have been fraudulent, is not well founded, as will be seen when the evidence is carefully examined. Indeed it does not take a very careful examination; for if fraud was committed at this precinct, and there is no doubt on that point, it was committed by contestee's political friends, and no one would hardly believe that they would have committed it in favor of his political opponent. His political friends had full and complete control of the election at this poll.

Black swears that he was greatly surprised at the large number of Democratic votes at this precinct. He says that the Republican vote in 1872 was over 200, and at the same election the Democratic vote was 40. The contestee, in his printed argument, page 25, corrects this error in Black's evidence, and fixes the Republican vote at 100 and the Democratic vote at 40. Black says that in 1874 the Democratic vote was not over 30, the Republican nearly 300. In this he is nearly correct. He says that the increase in the republican vote was anticipated, and for that

reason box No. 2 was established, not anticipating an increase in Democratic votes. And the contestee adopts the false theory that many persons have advocated recently that it is hardly possible for a colored voter to vote the Democratic ticket. But this theory is greatly at fault so far as this precinct is concerned, for it appears from the evidence that at box 1, in 1876, the Democratic vote was 98, and the political friends of the contestee having complete control of box No. 2, as we have already said, returned for contestant, a Democrat, 141 votes, making a total Democratic vote of 239 at that place as against 25 two years before. It is therefore argued by the contestee that the Democratic vote at box 2 was greatly increased by fraud.

It is hardly to be supposed that the political friends of the contestee would commit a fraud which would increase the vote of his political opponents. The legal presumption is the other way, and as there is no evidence to support this argument it must fall. There is another fact in connection with this poll to which we wish to call attention. Moore says that Black counted 277 tickets in all that were put in the box, and Webster, the clerk of the court, swears that when the box was opened by the county board of canvassers, that 277 was the exact number of ballots found in the box. This is another prominent feature in the evidence tending to produce uncertainty as to the true vote, and shows, if true, that the ballots were tampered with before they were counted.

But there is still another view of this question assumed by the contestee; he insists that he has proven by 308 persons that they voted for him at Archer No. 2. He claims that he has proven this by the mouths of the voters, outside of the returns, and that therefore he is entitled to have them counted for him in case the returns are set aside for fraud. And as the contestant has failed to introduce any witnesses to testify that they voted for him at said poll, that therefore he, contestant, is not entitled to have any votes counted for him at said poll; thereby giving contestee 308 majority at said poll instead of 258 majority fraudulently returned for him by his political friends, thus enabling him and them to succeed by their own wrongs to a greater extent than their criminal acts standing alone would justify. But the statements of these 308 witnesses will hardly sustain this assumption by the contestee. A large number of them do not testify that they voted for contestee, but that they voted the Republican ticket; many of them could not read, as we have already said, and therefore they had to depend upon others for the kind of tickets they voted, and were liable to be deceived; but however this may be, your committee is of the opinion that this view of the case cannot be sustained under the proof. The proof shows that contestant did get votes at said poll, and that he probably got somewhere from 136 to 141. Your committee admits that if there was no evidence other than the returns, they being fraudulent and void, proving that the contestant received votes at said poll, then it would be unquestionably right to count the vote clearly proven to have been cast for contestee. But when the proof shows that a large number of votes were, in point of fact, cast for one candidate, as for the contestant in this case, but the number not being sufficiently certain to enable them to be counted, it seems to your committee to be manifest injustice to count the votes of his opponent thereby increasing his majority to the full number of votes so counted. There is no rule of law or equity that will justify such action, but it would be a clear case of uncertainty in the proof, and stands in the same position as to uncertainty as the other positions assumed, and the entire vote must be rejected.

Your committee has therefore come to the following conclusions as to this precinct:

1st. That the result of the election as shown by the returns is false and fraudulent.

2d. That from the other evidence in the case it is impossible to ascertain the true vote of said poll.

The vote must, therefore, in the opinion of your committee, be entirely rejected.

Waldo precinct, Alachua County.

Contestee asks that the returns from this precinct be rejected for the reason that the inspectors grossly disregarded the election law, so as to render the returns unreliable, and because said inspectors allowed passengers on the railway to vote without regard to residence, age, or registration, and that a large number of such persons did so vote for member of Congress with the knowledge, consent, and connivance of the inspectors; such persons not being citizens of the State of Florida. All the facts shown in regard to this subject will be found in the evidence of Burr, Record, p. 343; Noyes, p. 362, and Earle, p. 364. And after a careful examination of their testimony your committee is satisfied that there was no disregard of the election laws by the inspectors at this precinct which indicates any desire to commit fraud, and that the testimony is such that the true vote can be clearly ascertained. Your committee also find that the 20 persons who voted at this precinct who did not reside in the county only voted for electors for President and Vice-President of the United States, with the exception of one, whose name is William Ford, who voted for contestant for Congress. The evidence shows that all other persons whose names were not on the registration-list were sworn before they were allowed to vote.

In the opinion of your committee, after deducting the vote of said William Ford from the vote of contestant, the vote as returned from this precinct should be counted.

Wacassaw precinct, Alachua County.

The allegations in regard to this precinct on the part of the contestee are not sustained by the proof. He does not attempt to prove any, except the one in regard to intimidation, and minors voting. The proof entirely fails to show intimidation, in the opinion of your committee. Wasson, the Republican inspector, and only witness who testifies in regard to this precinct, says he doubted some of the voters who voted were of age, as he did not know them, but that they made oath that they were 21 years of age. We are of the opinion that this precinct should be counted.

This, we believe, disposes of all the questions of fact at issue between the parties in regard to the election in Alachua County, with the exception of the questions arising under the constitution of the State of Florida in regard to the rights of foreign-born persons to vote, and the questions arising under the registration laws of said State. And as these questions will have to be met in the investigation of the facts arising in some of the other counties, they had just as well be disposed of here by the committee; and—

1st. As to the questions arising under the constitution in regard to foreign-born citizens.

The contestee alleges that seven votes in Alachua County, five in

Columbia County, ten in Nassau County, twelve in Putnam County, and fifty in Duval County should be rejected on the ground that they were alien born, and did not at the time they voted present certified copies of their naturalization papers, or of their declaration of intention to become naturalized.

On a careful examination of the evidence, your committee find that all of said voters had either been naturalized or declared their intention to become so, with the exception of one in Alachua County and six in Duval County. Your committee also find from the evidence that said voters were not challenged, and were not either requested or required to produce their naturalization papers by the officers conducting the election at the various precincts where they voted.

It is upon this state of facts that the question is presented whether these persons were qualified voters under the constitution and laws of Florida.

The qualifications of voters in Florida are prescribed and defined in section 1 of Article XIV of the constitution of that State, as follows:

SEC. 1. Every male person of the age of twenty-one years and upwards, of whatever race, color, nationality, or previous condition, who shall at the time of offering to vote be a citizen of the United States, or who shall have declared his intention to become such in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months next preceding the election at which he shall offer to vote, shall in such county be deemed a qualified voter at all elections under this constitution. (See Acts of 1868, containing the State constitution, p. 211.)

The third section of the same article of the constitution, and the one on which the contestee relies, does not create any *additional qualifications* for voters, but only prescribes a *regulation*. It reads as follows:

SEC. 3. At any election at which a citizen or subject of any foreign country shall offer to vote under the provisions of this constitution, he shall present to the persons lawfully authorized to conduct and supervise such election, a duly sealed and certified copy of his declaration of his intention, otherwise he shall not be allowed to vote. And any naturalized citizen offering to vote, shall produce before said persons lawfully authorized to conduct and supervise the election, the certificate of naturalization, or a duly sealed and certified copy thereof, otherwise he shall not be permitted to vote. (Acts of 1868—constitution, sec. 3, pp. 211-212.)

In the opinion of your committee it is clear that section 1 of Article XIV prescribes and defines *all* the qualifications of voters, and equally clear that section 3 does not create any additional qualification.

The qualification prescribed by section 1, in regard to foreign-born persons, is, that at the time they offer to vote they shall either be citizens of the United States, or shall have declared their intention to become such; while section 3 does not create any additional qualification, but only undertakes to prescribe the *mode of proof*, in case the right of such persons to vote shall, at the time they offer to vote, be disputed.

Such is the reasonable interpretation of these two sections of the constitution of Florida, when taken and construed together.

Moreover, this is the construction given by the first legislature in the State of Florida, which convened under the constitution of 1868, and it is to be observed that very many of the members of said legislature were also members of the convention that formed the constitution, and your committee are advised that this construction has been acquiesced in by every legislature that has convened since that time.

The legislature of 1868 treated and construed the third section of Article XIV of the constitution as being merely *directory*, as will be seen

from the sixteenth section of the act of August 6, 1868, which provides as follows:

SEC. 16. If any person offering to vote shall be challenged as not qualified, by any inspector, or by any other elector, one of the board shall declare to the person challenged, the qualifications of an elector. If such person shall claim to be qualified, and the challenge be not withdrawn, one of the inspectors shall administer to him the following oath: "You do solemnly swear that you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen of the United States according to the acts of Congress on the subject of naturalization); that you have resided in the State one year, and in the county six months next preceding the election; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court;" and if the person challenged shall take such oath he shall be allowed to vote. (Pamphlet acts 1868, p. 5, sec. 16.)

It is shown by the testimony in this case that none of these alien-born voters, except one, were challenged; that their naturalization papers were not demanded; that they were allowed to vote without question, and that they were in fact (with the exception of seven), at the time they voted, either naturalized citizens of the United States, or had declared their intention to become such, as required by section 1 of Article XIV of the constitution of the State. And your committee are of the opinion that, as they are proven to have possessed the qualification of citizenship or of having declared their intention to become citizens as required by the constitution, their votes should not be rejected, and they deprived of the highest privilege of an American citizen, which they had acquired by the abandonment of their native land, and by the solemn renunciation of their native allegiance.

It is the settled law of elections that where persons vote without challenge, it will be presumed that they were entitled to vote, and that the sworn officers of the election who received their votes performed their duty properly and honestly, and the burden of proof to show the contrary devolves on the party denying their right to vote.

In this case, so far from the evidence showing that the persons in question were not entitled to vote, it shows that they were either naturalized, or had declared their intention to become so, and the contestee has failed to prove anything to the contrary.

"It is quite settled," says Mr. McCrary in his work on elections, "that where one who is alien-born has voted at an election, the *law presumes* that he has been naturalized, until the contrary appears." (McCrary, sec. 294, citing New Jersey case, 2 Cong. Cases.)

It is therefore seen that a person who has voted is presumed to have been qualified until the contrary is shown. Mr. McCrary, in section 62 of his Treatise on Contested Elections, says, that the contrary may be presumptively shown by proof that the voter has failed to produce the proof required by law before voting; in which case it is incumbent on the person claiming his vote to show affirmatively that he was a qualified voter. (McCrary, sec. 62.)

This has been done by the contestant in all the cases of this class, except in the few instances already mentioned.

Your committee also find it to be the law, that "evidence which might have been sufficient to put the voter on his explanation if challenged at the polls, is not deemed to be sufficient to prove a vote illegal after it has been admitted." (McCrary, sec. 371.)

Section 1 of Article XIV of the constitution of Florida defines and determines the *qualifications* of voters in that State, while section 3 of the same article only prescribes a *regulation*; and it is a settled prin-

ciple of law, that the *right to vote* must not be impaired by the *regulation*. (McCrary, sec. 8.)

It appears from the evidence that the larger portion of these alien-born voters had been naturalized, and, so far as they are concerned, the question is conclusively settled by section 1 of the fourteenth amendment of the Federal Constitution, which contains the following provision, to wit: "That all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside"; and "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

After having fully considered both the law and the facts of the case, your committee are of the opinion that none of these votes should be rejected except one in Alachua County and six in Duval County, in regard to whom the contestant has not shown affirmatively that they were either naturalized or had declared their intention to become so.

2d. As to the question of registration under the laws of the State of Florida, the contestee alleges, in his answer, that in several of the counties in said district a number of persons voted whose names were not found on the registration list of the county in which they voted.

Section 7 of the election law of the State of Florida provides for the registration of the voters in the several counties of the State, and the manner of doing the same. The clerk of circuit court of each county is required to prepare a suitable book for the registration of the names of the electors residing in his county; that the oath required to be taken by the electors shall be written or printed therein; that the names of the electors shall be alphabetically arranged in said book, and the date of registration, &c.

Section 9 of the same law provides that the board of commissioners of each county must meet at the clerk's office in their respective counties within thirty days preceding the day on which any election shall be held, and examine the list of registered electors, and erase therefrom the names of such persons as are known or may be shown to their satisfaction to have died or ceased to have resided permanently in the county, or otherwise becoming disqualified to vote.

This section gives the board of commissioners a large discretionary power. They may *erase* names from the registration-list at discretion.

This would be a very dangerous power indeed, and might deprive many electors of their right to vote by having their names wrongfully stricken or *erased* by the board of commissioners from the registration-list, were it not for another provision of the law which provides that if the voter "on offering to vote," in case his name is not found on the registration-list, "will take an oath that his name has been improperly" struck off from "the list of registered voters, and shall take the oath required to be taken by persons whose right to vote shall be challenged, such person shall have the right to vote."

Now it is clear that if a person offering to vote, whose name has once been on the registration list of the county, but which has been wrongfully *erased* therefrom by the county commissioners, takes the oath that his name has been improperly erased, that he is then legally entitled to vote, and if he does vote, possessing the other qualifications under the law, his vote must be counted. The contestee does not aver for whom these non-registered voters, which he insists are illegal, cast their votes, neither does he undertake to prove for whom they did vote, but he asks that they be deducted from the vote of the contestant. This, of course, cannot be done. But under the rule it does not follow that illegal votes

must be counted in making up the true result, because it cannot be ascertained for whom they were cast. In purging the polls of illegal votes the general rule is that unless it be shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidate having the largest number. (McCrory on Elections, p. 223; *Shepherd v. Gibbons*, 2 Brewster, 128; *McDaniel's Case*, 3d Penn., L. F., 310; *Cushing's Election Case*, 583.)

Of course, in the application of this rule, such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each. (McCrory, p. 223.)

This is, perhaps, the best rule that can be adopted in such case. It is manifest, however, that it may sometimes work a great hardship; for the truth might be, if it could be shown, that all the illegal votes were cast for one of the candidates, while it is scarcely to be presumed that they would ever be divided between the candidates in exact proportion to their whole vote. But the rule that would deduct them all from either one of the candidates, in the absence of proof as to how the illegal votes were cast, is much more unreasonable and dangerous. The above rule is perhaps the safest one to be adopted in a court of justice, where there is no power to order a new election, and where great injury would result from declaring the office vacant. But it is manifest, as we have already said, that it might work a great hardship. And in a legislative body, having the power to order a new election, it is safer, in the opinion of your committee, and more conducive to the ends of justice, to order such new election, than to reach a result by the application of such a rule. (McCrory, pp. 224, 225.)

Under the rules above referred to, it may be that the averments in the answer, by a very liberal construction, are sufficient to let in the proof of contestee, to show that illegal votes were cast, on the grounds averred.

Your committee will therefore consider the evidence, and determine whether it proves that illegal votes were cast under the reasons assigned.

The contestee offers in evidence the certified copies of the registration-lists of the counties; also the poll-lists of the precincts of said counties; and he invites a comparison of the names on the poll-list with the names found on the registration-list, and insists that the votes of all persons whose names appear on the poll-list as having voted, but whose names are not found on the registration-list, be declared void, for the reason that such votes are illegal.

Your committee does not agree with this view of the question. If a person vote in a county in Florida, having all the qualifications of a voter of said county except that his name has never been registered in said county, his vote, in the opinion of your committee, would be illegal, or if the name of such person having once been on the registration-list of said county, but having been erased therefrom by the board of commissioners, afterward cast his vote without having first taken the oath that his name had been improperly stricken "off from" the list of registered voters, his vote would also be illegal. But suppose we examine the poll-list and find the name of a voter thereon as having voted, and we then turn to the registration-list and find his name is not on that, can it therefore be said that he voted illegally? Certainly not. If a person votes at an election, his vote is presumed, under the law, to be legal until the contrary be proven in a legal way, for the reasons—

1st. That the acts of an officer or officers of an election within the scope of this authority are presumed to be correct and honest until the contrary is made to appear, and therefore that they as such officers would not receive an illegal vote.

2d. That the presumption is always against the commission of a fraudulent or illegal act, and, therefore, that a man would not cast an illegal vote. (McCrary on Elections, sec. 87-440; *Little v. Robins*, 1st Bartlett, p. 138; *Gooding v. Wilson*, Forty-second Congress.)

This presumption must be overcome by positive proof. Take the case of a voter. His name is on the poll-list of a certain precinct showing that he voted at said precinct; his name, however, is not found on the registration-list. These facts are not sufficient to prove that his vote is illegal. They do not overcome the presumption of law arising in favor of the legality of his vote under the above rules. His name may have been improperly erased from the registration-list by the county commissioners, and he may have taken his oath to that effect before having deposited his ballot in the ballot-box, and the legal presumption is that he did; and in that case his vote would be legal if his name had ever been on the registration. The certified copy of the poll-list is evidence that he voted. But a certified copy of the registration-list after it has been revised under the law by the board of commissioners is not evidence of the fact that his name was never on the registration, for it may have been erased therefrom by said board, and then it would cease to be a part of the record of registration, and a certified copy of the record of registration would not contain his name, neither would it show that his name had been erased therefrom; for the law of Florida does not provide that a record of the names of persons erased from the registration-list shall be made. There is no legal way of preserving them on the record. The fact cannot be proven by the record, and certainly cannot be proven by the certificate of the clerk attached to what purports to be a copy of a record which has no legal existence, for the clerk can only certify to records in such case, and his certificate to a fact in this case, outside of the records legally in his custody and of which he is legally authorized to give certified copies under his hand and seal, amounts to no more than the certificate of a private individual to a given fact. The fact may be true, but the certificate is no evidence of it. Therefore, the fact that the name of a person who is shown to have voted never was on the registration list, must be proven in the same manner you would prove any other fact not of record. The contestee, relying upon the certified copies of what he claims to be the list of persons whose names have been erased from the registration-list to prove the facts they contain, must fail on this point.

But the contestee undertakes in another way to prove that the votes of persons whose names appear on the certified copy of the poll-list of a particular precinct as having voted, and whose names do not appear on the certified copy of the registration-list of the county, are illegal. And to do so, he introduces H. Jenkins, jr., and Ed. Higgins as witnesses to testify, who, it is claimed, spent two months in gathering the facts in regard to this question.

We will consider the evidence of these witnesses.

1st. As to the statement of H. Jenkins, jr. He swears that the paper handed him, marked Exhibit A (found on page 650 of the Record), is a list of persons who voted at People's Mill, No. 4, Jasper, No. 2, Bennam's Mills, No. 7, and White Springs, No. 3, precincts in Hamilton County, in said district, whose names have been stricken from the registration-list of said county. "This," he says, "I have ascertained by the examination of certified copies of poll-lists of the precincts named, the registration-list of the county, and a list of the names of persons who have been stricken from the registration-list, all certified to by the clerk of Hamilton County, Florida." The contestee offers the paper in evidence.

Now, as your committee has already said in effect, this paper marked Exhibit A is not evidence under the law of Florida, and we know of no rule of law which would make it evidence for the purposes for which it is introduced, or indeed any other purpose. Witness says it is a list of persons whose names do not appear on the registration-list. How does he know this fact? He says he knows it by an examination of copies of the poll-lists, registration-lists, and a certified copy of a list of names stricken from the registration-lists.

Your committee has already decided that a certified copy of a list of names stricken or erased from the registration-list is not evidence for any purpose in this case. If it was, oral evidence is not inadmissible to prove its contents. The statements of this witness, therefore, in regard to the contents of the certified copies of the lists to which he refers cannot be considered.

The statements of the witness Ed. Higgins are to the same effect. He states that he has carefully examined the certified copies of the registration and poll lists, and a list of names stricken from the registration-lists, "*and by examination of other papers which have been placed on file in connection with these exhibits,*" in regard to the election in the counties of Suwannee, Putnam, Clay, Volusia, Orange, Alachua, Columbia, Bradford, and Hamilton, in said Congressional district, *and from this examination and comparison* of these papers the witness undertakes to swear that certain lists marked Exhibits A, B, C, D, E, F, G, H, and I contain the names of persons who voted in these counties, whose names do not appear on the registration-lists of said counties. These statements made by the witness are inadmissible. The papers themselves are the best and only evidence of what they contain, if they are admissible for any purpose. The committee must make the comparison and cannot take the statements of the witness as to the result of his comparison.

Your committee is of the opinion that this proof is insufficient to prove that these persons voted illegally whose names are not found on the registration-lists of their respective counties. If they took the oath that their names had been improperly erased from the registration-list—and the proof thus far is insufficient to overcome the presumption that they did—their votes are legal. The contestee undertakes to overcome the presumption in favor of the legality of this class of votes in another way. On some of the poll-lists of the precincts in these counties is found at the end of some of the names of the persons voting these words, "Not sworn." At the end of others the word "Sworn." Now, it is contended by contestee that whenever you find a name on the poll-list of any precinct with the words "not sworn" written after it, which name is not found on the registration-list of the respective county, that the vote of such person is illegal. This position cannot be maintained, for reasons which we have heretofore stated. But we will further say that the law does not authorize the election officers, or either of them, to write the words "not sworn" or "sworn" on the poll-list after the names of the voters who have voted and whose names are not found on the registration-list of the county in which they vote, whether such persons were sworn or not before they voted. The writing of these words are therefore unofficial acts, and not a part of the poll-list under the law, and not evidence, and cannot be made so by a certified copy of the poll-list, as is here attempted to be done. It would be a very dangerous rule, indeed, which would permit everything which appears on the face of a record to become evidence, whether placed there by authority of law or by the unofficial acts of irresponsible persons. How

these words came to be written on these poll-lists, or by whom they were so written, the evidence does not show. But it is enough for your committee to know that they were not placed there pursuant to any law, and cannot be considered as evidence.

Your committee is, therefore, of the opinion that the evidence does not prove that the votes cast by persons whose names were not found on the registration-lists of the counties in which they voted are illegal. The evidence does not prove that they did not take the oath required by law in such case. There being no further questions affecting the vote of Alachua County, it must be counted as follows:

Deduct from contestant's vote, as given in the tabulated statement in the fore part of this report, 141 votes returned for him at Archer precinct, No. 2, and 1 vote cast by William Ford, a non-resident, at Waldo precinct, 1 foreign vote, in all 142. And deduct from the vote of contestee, as shown by the same statement, the 399 votes returned for him at said Archer precinct, No. 2, and the remainders will be the true vote of the county.

BAKER COUNTY.

The principal question in regard to the election in this county is whether the returns from the precincts of Johnsville and Darbyville, in said county, shall be counted. That the returns from these precincts are regular will appear from the inspection of the returns themselves. (See Exhibits B and D, Record, pages 49-51.) Why these returns were rejected by the canvassing-boards your committee need not determine, as that question is not necessarily before us. But it is our duty to ascertain the true vote of these precincts if we can do so. And in order to do so your committee will go behind all returns and look at the facts, if necessary. That the returns from these two precincts should have been counted by the canvassing-boards, your committee can have no doubt after a careful examination of the evidence in regard to that point; and

That the election at both of said precincts was fairly, peaceably, and honestly conducted is abundantly shown by the testimony of Edward Rowe and William Noble, inspectors of election at Darbyville, and Gordon S. Taylor and W. S. Cobb, inspectors at Johnsville. They testify as follows:

Deposition of Edward Rowe.

EDWARD ROWE, of the county of Baker, being duly sworn, deposes and says:

Question. What is your name?—Answer. Edward Rowe.

Q. Where do you reside?—A. In Baker County, State of Florida.

Q. Where were you on the 7th of November last, at the general election in the State of Florida?—A. At the Darbyville precinct, in Baker County, in said State.

Q. Was there an election held there that day for member of Congress and other officers, Federal and State?—A. Yes, sir.

Q. Were you or not an election officer at that precinct on that day; and, if so, what office did you hold?—A. I was one of the managers of the election at that precinct.

Q. Were you sworn as such manager?—A. Yes, sir.

Q. Were you there all the time during the election on that day?—A. I was, and served as a manager or inspector.

Q. Who were the other managers and clerk at said precinct at said election?—A. Mr. Elisha Green and Mr. William Nobles were the inspectors, and John McIvor was clerk.

Q. Was the election there on that day peaceable and fairly and honestly conducted?—A. It was.

Cross-examination:

Q. Did any one vote at that precinct on that day that was not a registered voter?—

A. If there was, I did not know it.

Q. Did or did not electors at that precinct have tickets taken out of their hands by force, and other tickets forced upon them to vote?—A. If there was, I did not see anything of it.

Re-examined by contestant:

Q. Were you in a position where you could look out upon the voters around the polls during that day?—A. I was.

EDWARD ^{his} + ROWE.
mark.

Witness:

JOHN HERNDON,
County Judge, Baker County, Florida.

Deposition of William Nobles.

WILLIAM NOBLES, being duly sworn, deposes and says:

Question. What is your name?—Answer. William Nobles.

Q. Where do you reside?—A. In Baker County.

Q. Where were you on the 7th day of November last?—A. I was at Darbyville precinct, in Baker County.

Q. Was there an election held there on that day for governor, lieutenant-governor, Presidential electors, and member of Congress for the second Congressional district of Florida?—A. There was.

Q. Were you not an election officer at that precinct at said election? And if so, state what office it was.—A. I was manager and inspector.

Q. Were you duly sworn as such manager and inspector?—A. I was.

Q. Was the election there on that day peaceable and fairly and honestly conducted?—A. It was.

Q. Do you remember who were the other inspectors at that precinct?—A. Mr. Green and Mr. Rowe.

Q. Who was the clerk at said election?—A. Mr. John McIvor.

Cross-examined:

Q. Who administered the oath to you as inspector?—A. I do not remember who administered the oath to me as inspector, but I know I was sworn as such.

Q. How do you know?—A. I was sworn to see that the election was conducted fairly.

Q. Did you sign any oath in writing?—A. I did.

Q. Do you mean when you say the election was conducted fairly and honestly, to refer entirely to the inspectors and managers of the election?—A. I do.

Re-examined:

Q. Were you sitting where you could look out upon the voters about the polls while the election was going on?—A. I was sitting where I could see a portion of the crowd.

Q. Did you observe any disturbance of the public peace, or anything that was unfair or dishonest among the voters?—A. I saw nothing going on that was unfair or dishonest; no disturbance of the peace or riots; everything seemed peaceable.

Recross:

Q. Did you see among the crowd about the polls any person or persons taking tickets out of the hands of voters against their will and presenting other tickets to them, or making or using any forcible means to cause voters to vote against their will?—A. I did not see it.

WILLIAM ^{his} + NOBLES.
mark.

Attest:

JOHN HERNDON,
County Judge, Baker County, Florida.

Deposition of Gordon S. Taylor.

Who, being duly sworn, deposes and says:

Question. What is your name?—Answer. Gordon S. Taylor.

Q. Where do you reside now, and where did you reside on 7th November last?—A. In Baker County.

Q. Were you at a general election held in Florida on the 7th November last; if so, at what precinct and what county?—A. Johnsville precinct, Baker County.

Q. Did you act as inspector at the election at said time and precinct?—A. I did.

Q. Were you duly sworn as such?—A. I was.

Q. Was the election at that precinct conducted peaceably, fairly, and honestly?—
A. It was.

Q. Who were the other inspectors who acted with you?—A. Elias Williams and William C. Cobb.

Q. Were they duly sworn as such?—A. They were.

Cross-examination:

Q. Who administered the oath as such inspector?—A. Myself.

Q. As what officer did you administer the oath?—A. As justice of the peace.

Q. When did you take the oath and administer it?—A. On the 7th day of November last.

Q. Did you see any one at the election at your precinct being prevented from voting by force or threats of any kind?—A. I did not.

Q. Were you holding any other office on the 7th day of November last besides that of inspector of election and justice of the peace?—A. I was tax assessor and collector.

Q. When were you appointed justice of the peace and tax assessor and collector?—
A. I was appointed justice of the peace in 1875 and tax assessor and collector in 1876, as near as I can recollect.

Q. Were you or were you not appointed tax assessor and collector after you were appointed justice of the peace?—A. I was.

Q. Did you qualify in both offices?—A. I did.

Re-examination:

Q. Were you an acting justice of the peace on the 7th day of November last?—A. I was.

Q. Did you administer the oath to Elias Williams and William C. Cobb on that day as inspectors of the election at said Johnsville precinct?—A. I did.

G. S. TAYLOR.

Deposition of William C. Cobb.

Who, being duly sworn, deposes and says:

Question. What is your name?—Answer. William C. Cobb.

Q. Where do you reside now and where did you reside on the 7th November last?—
A. In Baker County.

Q. Were you at a general election in Florida on the 7th November last; and, if so, at what precinct and in what county?—A. In Johnsville precinct, in Baker County.

Q. Did you act as inspector of election at said precinct?—A. I did.

Q. Were you duly sworn as such?—A. I was.

Q. By whom were you sworn?—A. By Gordon S. Taylor.

Q. Who were the other inspectors that acted with you?—A. Elias Williams and Gordon S. Taylor.

Q. Was the election at said precinct conducted peaceably, fairly, and honestly?—
A. It was.

Cross-examined:

Q. Did you know when you took the oath before Gordon S. Taylor that he was tax assessor and collector of Baker County?—A. Yes, sir.

WILLIAM C. COBB.

Contestee asks that 75 votes cast and counted for contestant in said county be rejected, on the ground that they were cast by persons who were not registered in compliance with law. Your committee is of the opinion that, under the rules of law laid down in the case of Alachua County, in regard to registration, there is nothing in the evidence which sustains the charge. The evidence shows that the court-house of said county burned after the election, and it pretty clearly appears that the records of the clerk's office, including the registration-list, poll-list, and returns of the election, were all burned. There is an attempt, on the part of contestee, to prove that some of the persons registered just before the election were not legally registered. But whether they had been registered before, and their names been improperly dropped, does not appear; nor whether they took an oath to the effect that their names had been improperly dropped from the registration-list does not appear.

There is no attempt at proving, by the contestee, that 10 votes were

cast for contestant by non-residents, minors, alien-born persons, &c., as alleged. Therefore, the vote of this county must be counted as returned by the precinct officers, including the vote of Johnsville and Darbyville precincts. This being done, the vote of this county will stand as follows:

Contestant.....	238
Contestee.....	143

As shown in said tabulated statement.

BREVARD COUNTY.

The testimony of John M. Lee and Quinn Bass, the only witnesses examined by contestee, fails to establish the fact charged that there was a fraudulent suppression of the polls at any precinct in this county. (Lee, p. 445; Bass, p. 442.)

The vote must, therefore, be counted as returned by the precinct officers.

Contestant.....	111
Contestee.....	56

BRADFORD COUNTY.

Contestee asks, in his answer, that Lake Butler precinct, in this county, be rejected on the ground of fraud, &c. But he abandoned this in his printed argument (p. 81). He only insists on his allegation in regard to non registered voters. We do not think the proof sufficient to justify the throwing out of any vote on this ground. The vote should be counted as set forth in said tabulated statement.

Contestant.....	700
Contestee.....	199

CLAY COUNTY.

Your committee is of the opinion that the entire vote of this county as returned by the precinct officers should be counted. The county board of canvassers counted all the votes of this county except No. 8 (No. 11 Pond; see Record, pp. 179, 180), and said canvassers say in their return that this precinct was not counted for the reason that there was no evidence that the inspectors at this poll were sworn. But the evidence in the record shows that the inspectors were sworn, and that the election at said precinct was honestly and fairly conducted. (Lyman Hall, pp. 24, 25; Buddington, p. 26; Ex. A and B, p. 27.)

Even the fact that the inspectors of the election were not sworn will not of itself, in the absence of fraud, render the election void; and as there is no fraud shown at this poll it comes within the rule. (McCrary, sec. 305.)

It is alleged that Elias Padgett, sr., was a non-resident of this county, and that he voted at Clay Hill precinct. But a careful examination of the evidence fails to show that his vote was illegal. It is not shown for whom he voted for Congress. We think the evidence does not prove that any illegal votes were cast in this county.

The vote, therefore, of this county should be counted, including No. 8 (No. 11 Pond), which gave contestant 29 votes and contestee 6 votes.

Contestant.....	315
Contestee.....	126

COLUMBIA COUNTY.

The contestee asks that the vote of precinct No. 4 be rejected, on the ground that the election was fraudulently conducted; that the returns were tainted with fraud by the inspectors and others wrongfully interfering with the election. There is nothing to warrant the suspicion of fraud in the conduct of the election, either in the action of the inspectors or by the interference of other parties.

The contestee attempts to prove that Daugherty, one of the inspectors at said precinct, threw a Republican ticket under the table and put another in the ballot-box in its place. And to do this, he introduces Small, Taylor, and Jordan. (See Record, pp. 447-467-498.) An examination of their evidence shows that they contradict themselves and each other to such an extent as to render their statements altogether unreliable. But they are clearly contradicted by other witnesses. Besides, the veracity of Small and Jordan has been fully discredited by four unimpeached witnesses. (See evidence of Thompson, Record, pp. 169, 170; Kirby, Record, p. 171; Potsdam. Record, p. 170; Henry, Record, p. 170.)

Again, the testimony of Small, Taylor, and Jordan is fully contradicted, not only by Daugherty, but by Brown, who was a challenger, and was present at said precinct all day. (See evidence of Daugherty, Record, 142; Brown, Record, 149.) Contestee asks that the return from said precinct should be rejected on the further ground that the poll-list was fraudulently suppressed by some of the inspectors. The testimony of Cato Carter, a Republican inspector, and the only witness to the point, settles the question, and clearly explains why the poll-list was not returned, and proves that there was no intention of fraud. (Carter, pp. 454, 455.) Contestee attempts to prove that three colored men were shut up in Hart's gin-lot, in Lake City, on the day of election, and were compelled to vote the Democratic ticket. The only witness produced was this same Benj. Jordan, who says he only knew one of the men, who told him he was compelled to vote the Democratic ticket. He does not know for whom they voted. (Jordan, 950.) But as Jordan has been so fully impeached, it is wholly unnecessary to discuss this matter further.

Contestee attempts to show that ten persons voted at said precinct whose names were not on the registration-list. Cato Carter is the witness to this fact. He does not know for whom they voted, nor does he prove whether they took the oath or not. (See evidence of Carter, Record, pp. 454, 455.) Daugherty swears that all who voted at this precinct whose names were not found on the registration-list took the oath; this settles the question, under the construction of the law and evidence in case of Alachua County. (See evidence of Daugherty, p. 141.)

Precinct No. 1.—Contestee asks that 30 votes be rejected from contestant's vote at this precinct, on the ground of non-registration, non-residence, intimidation, and fraud. There is no proof of non-residents voting, nor of coercion, intimidation, nor fraud at this poll. As to non-registered voters, A. D. Holland swears that there were 13 voters who voted and whose names were not found on the registration-list, but that they all took the required oath. Holland was a Republican inspector at this poll. (See evidence of Holland, p. 451.) And seven of these 13 were examined, and they all swear that they took the oath. W. M. Ives says that he administered the oath to all whose names were not on registration-list. (See evidence of Ives, pp. 167, 168.)

There is no proof of intimidation on the day of election. But contestee attempts to prove that Wm. McNish, Stephen Thomas, Joe Simmons, Jas. King, and Thomas Boyd were arrested on the road, a few

miles from Lake City, on the 17th day of October, 1876, by Joel Niblack and three other men, and were compelled by their captors by intimidation to promise to vote the Democratic ticket. Thomas and Simmons say that their lives were threatened, and their lives were spared only on condition that they would vote the Democratic ticket. But Wm. McNish, the principal witness, proves that by the vote of the entire capturing party these five persons were spared before anything was said about politics. (McNish, pp. 935, 936.)

The whole trouble seems to have grown up in regard to a hog, which Joseph King was accused of stealing, and when McNish told all he knew about the hog Niblack said he was satisfied. Boyd says that McNish, being frightened, made the first proposition in regard to voting, and that Niblack told them several times afterward that he did not hold them responsible for their votes, and that he voted the Democratic ticket freely. Boyd says that the promise they made to Niblack was that they would aid and assist the honest people in putting down stealing, and this was satisfactory. The charge of intimidation, as to the election, is not sustained by the evidence.

Your committee have examined the evidence very carefully in regard to the other allegations and facts, and conclude that the vote of this county should be counted as returned by the precinct officers as follows:

Contestant.....	901
Contestee.....	717

DUVAL COUNTY.

Contestee claims in his answer that a certain number of votes cast in this county should not be counted because they were cast by non-registered persons and by foreign-born persons. These votes will have to be counted under the rule adopted by your committee in regard to these classes of voters, except the votes of 6 foreigners heretofore mentioned, the proof as to these voters being the same as it was in regard to those already passed upon. The contestee also asks, as to this county, that ten votes be deducted from the vote of contestant, because they were non-residents and minors. To sustain his averments to this effect, he proves by Philip Walters that Aaron Isaacs and William Monroe, who voted for contestee at West precinct, Jacksonville, were not legal voters for the reason that they had not resided in the State and county the requisite length of time. (See evidence of Walters, Record, 539, 540.) Contestee also proves that Henry Young voted at Baldwin precinct, and that he voted for contestant, when he had not been a resident of the county six months immediately preceding the election. (See evidence of Howell, Record, p. 595; Moore, pp. 560, 561.)

As we have said the evidence proves that these persons were not legal voters, and that they voted for contestant; they must therefore be deducted from his vote in this county.

Contestee undertakes to prove that certain devices were resorted to in this county by certain persons to compel persons to vote the Democratic ticket by numbering tickets which they gave to said voters, with threats that if they did not vote the Democratic ticket they would be discharged by their employers, &c. There is nothing in the answer which will justify such proof. There is no allegation in the answer that can under any rule of pleading known to your committee be construed so as to admit such evidence. We are disposed to extend the rule in this case as far as possible, in order to let in all the evidence, but when there is a total failure to plead, as is the case here, we cannot consider the

evidence in determining a fact which tends to change the vote of either candidate. Your committee will say, however, that the proof on this point wholly fails to sustain such an allegation were it averred. The proof shows that some fifteen of the ballots cast were numbered. But the evidence does not show that the voters were influenced in casting their ballots, by this fact, or that they in some instances knew of it. Your committee are therefore of the opinion that it is not such a violation of the law in regard to the secrecy of the ballot as to affect the election. We have not come to this conclusion without giving due weight to the secrecy of the ballot. The object of the adoption of the ballot was to afford the voter the means of preserving the secrecy of his vote, and to enable him to vote independently and freely without being subject to be overawed, intimidated, or in any manner controlled by others, or to any ill-will or persecution on account of his vote. The secret ballot is justly regarded as an important and valuable safeguard for the protection of the voter, and particularly the humble citizen, against the influence which wealth and station may be supposed to exercise. (See *People vs. Pease*, 27 N. Y. 81.)

The vote of this county should be counted as returned by the precinct officers after deducting the three (3) votes of Aaron Isaacs, William Mouroe, and Henry Young, and the (6) foreign votes from the vote of contestant. The vote will then be as follows:

Contestant.....	1,459
Contestee.....	2,331

HAMILTON COUNTY.

The contestee asks that the returns from Jasper precinct, No. 2, in Hamilton County, shall be rejected. But a careful examination of the testimony for both the contestee and contestant will show conclusively that while there may have been some irregularity, there was no fraud, or even unfairness, either attempted or accomplished at this precinct; but, on the contrary, the proof shows that everything was fair and honest both in the conduct of the election and in the canvass of the vote at said precinct—both political parties being represented.

The contestee has also attempted to show that Andrew G. Connell, Gilbert Connell, Joseph A. Ellis, and Joel Highsmith, who voted in said county, had not, at the time they voted, resided in the State the length of time required by law, and that J. D. Land and Benjamin Bowman, who voted in said county, had not resided there six months at the time they voted. But a careful and impartial consideration of the testimony will satisfactorily establish the fact that all the above-named persons had all the requisites of citizenship in both the State and county to entitle them to vote.

The majority of the committee are, therefore, clearly of the opinion that the returns from this county should be counted as returned by the precinct officers, the question of registration having been heretofore settled. The following is the true vote of said county in the opinion of your committee:

Contestant.....	614
Contestee.....	320

MADISON COUNTY.

In regard to the county of Madison there is no question raised by the evidence which requires any special notice. The vote is as follows:

Contestant.....	1,062
Contestee.....	1,521

MARION COUNTY.

There is no controversy as to the vote of this county to be determined by the committee. The vote must be counted:

Contestant	962
Contestee	1,548

NASSAU COUNTY.

The contestee alleges in his answer that 30 votes were cast for contestant in this county by persons who were intimidated and coerced to vote against their choice. He only attempts to prove 16 such votes, and by his own evidence he shows that 12 of the 16 voted the Republican ticket. (See Record, 410-415.)

Of the other 4, one (Lonzo Hunter) swears that he voted the Democratic ticket voluntarily. Gilbert Dorsy is the only one who swears that he voted for contestant, while the remaining two, Columbus Dorsy and Lewis Watson, swear that they do not know for whom they voted for Congress. (Record, Gilbert Dorsy, 409; Columbus Dorsy, 409; Lewis Watson, 411; Lonzo Hunter, 412.) So that the fact that numbered tickets were given out to some colored voters and resorted to as proof cannot prevail, especially in view of the evidence of C. W. Yulee, a witness for the contestee, who swears that many of the tickets were given to colored men who were members of the Democratic club, who of their own free will enrolled their names as such members. (Yulee, Record, 415, 416.)

In the opinion of your committee, the vote of this county should also be counted as returned by the precinct officers:

Contestant	670
Contestee	794

ORANGE COUNTY.

There is no question raised in the evidence in regard to this county which is not covered by the question of registration which has been passed upon by your committee. The vote, therefore, must be counted, as follows:

Contestant	996
Contestee	194

PUTNAM COUNTY.

The contestee attempts to prove that one Henry Cannon voted in this county who was under age.

The testimony shows that one Henry A. Cannon voted, but does not state for whom. The witness Lyle testifies that Henry A. Cannon was on the poll-list at Palatka in said county, but that he only knew Henry Cannon, and did not know any one by the name of Henry A. Cannon. (Lyle, p. 435.)

This does not prove that Henry Cannon voted at Palatka, or for whom, nor is it proven that Henry A. Cannon, whose name was on the poll-list, was under twenty-one years of age.

It is contended that one John Smith, who voted at Palatka, had not resided in the county six months before the election.

Smith swears that he went to Palatka on the 5th day of May, 1876, which was six months and two days before the election; that he had before that time left Saint John's County, where he had resided, taking

his family with him, and before fixing on a permanent place of abode he left his family at Green Cove Spring, in Clay County, and came to Palatka, with the intention of making it his permanent home, and made arrangements to go into business, and did go into business as a baker when he first came to Palatka, and after being there nearly two months he removed his family from Green Cove to Palatka. (Smith, p. 418.)

In the opinion of the committee these facts made Palatka the place of his permanent abode from the 5th of May, 1876, and that under the constitution and laws of Florida he became a legal voter after registration.

An examination of the testimony of Roger and Teasdale will show that they do not disprove the statement of Smith.

The question of residence and domicile is a question largely of intention (and especially as Smith swears that he went to Palatka with the intention of remaining there); the fact that he registered and voted there is very strong evidence of his intention to claim his domicile there.—McCrary, section 34.

The mere statement of a witness that a voter is not a resident, without giving facts to justify his opinion, is not sufficient to throw out such a vote; and after a vote has been admitted, something more is required to prove it illegal than to throw doubt upon it.—McCrary, sections 371 and 372.

The contestee contends that one William H. Lanagan, who voted at Georgetown precinct, in Putnam County, was not a resident of the county.

The examination of the testimony of Lyle, Ramsaur, and Rosignal, all witnesses of the contestee, will show that Lanagan had not changed his permanent abode from Putnam County.—Lyle, pp. 435, 436, 437; Ramsaur, p. 438; Rosignal, pp. 439, 440.

Lyle says he does not know that Lanagan left the county without the intention of returning.

Ramsaur says that he left in search of employment, leaving his child and property at Palatka, and always wrote that he expected to come home.

Rosignal says that Lanagan voted at Georgetown, in said county; that his name was not found on the registration list, but that he made oath that he was a registered voter in said county, and voted.

There being no other questions in regard to this county, except the question of registration and the one as to foreign-born voters, the vote must be counted as follows:

Contestant.....	617
Contestee.....	579

SUWANNEE COUNTY.

The contestee asks that 7 votes be deducted from contestant's vote in this county on the ground of non-residence, non-registration, and other disqualifications, and he introduces one Thomas H. Harris as a witness, who states that he knows that John Williams's name did not appear on the registration-list, and that he believes that the names of Wm. L. Keller and S. W. Parnell did not appear on said list, but that the ordinary oath taken by challenged voters was taken by them.—R. Harris, 529.

But George W. Thralls, a United States supervisor at that precinct, swears that there were two forms of oath administered.—Thralls, pp. 523-532.

The evidence of Thralls as to the age of Moses Driver, who voted at

said precinct, is wholly insufficient to establish the fact that Driver was under age when he voted.—Thralls, Record, p. 533.

This is all which need be said in regard to this county. The question as to foreign-born and non-registered voters under the evidence comes under the rule heretofore laid down by the committee. The vote must be counted as returned by precinct officers:

Contestant.....	629
Contestee.....	456

SAINT JOHN'S COUNTY.

There is but one question involved in regard to the vote of this county which has not heretofore been noticed, and that is in regard to the votes of Peter Marken, Frank B. Genovar, and Nester Genovar. It is claimed that these voters were non-residents of said county. But we think a careful examination of the evidence clearly shows that they were all residents of said county and had been the requisite length of time. See their evidence, Record, pp. 496-499. The vote of this county should be counted as returned by the precinct officers:

Contestant.....	508
Contestee.....	331

VOLUSIA COUNTY.

The only question arising in this county which we need here notice is the question in regard to the vote of Henry Clay. Contestee offered evidence to show that Clay voted for contestant under intimidation. But your committee think it is altogether insufficient to establish the fact. The testimony of Fitts, the only witness examined by contestee, does not make out a case of coercive voting; if even it did, standing alone, it is overwhelmingly contradicted by the evidence of three credible witnesses, two of whom were officers of the election at the precinct where said Clay voted. Fitts, Record, 525-'6-'7. See evidence of Chandler, 172; Brown, 173; Oduno, 174.

Therefore the vote of this county should be counted according to the returns of the precinct officers, as follows:

Contestant.....	474
Contestee.....	172

Your committee has now completed the investigation, and find the following to be the true vote, by counties, of the contestant and contestee:

Counties.	Finley.	Bisbee.
Alachua.....	1, 112	1, 573
Baker.....	238	143
Brevard.....	111	56
Bradford.....	706	199
Clay.....	315	126
Columbia.....	901	717
Deval.....	1, 459	2, 331
Dade.....	5	8
Hamilton.....	614	329
Madison.....	1, 082	1, 521
Marion.....	962	1, 548
Neenan.....	670	794
Orange.....	926	194
Putnam.....	617	579
Savannah.....	629	456
St. John's.....	508	331
Volusia.....	474	172
Total vote of each.....	11, 329	11, 077
Majority for.....	252	.....

This conclusion has been reached through as careful an examination of the evidence and the law applicable thereto as your committee was able to make. This result was arrived at, as has been heretofore shown, by excluding from the count Archer precinct, No. 2, in Alachua County, and by counting the rest of the vote of the district as returned by the precinct officers, after deducting therefrom such votes as in the opinion of your committee were illegal.

Your committee desire to add that the evidence in this case shows that no unfairness, dishonesty, or fraud in the conducting of the election at any of the precincts in the entire Congressional district was attempted or committed, except at Archer precinct, No. 2, in Alachua County.

Your committee, therefore, recommend the adoption of the following resolutions:

Resolved, That Horatio Bisbee, jr., is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the second Congressional district of Florida.

Resolved, That Jesse J. Finley is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the second Congressional district of Florida.

THOMAS. R. COBB.
JOHN T. HARRIS.
MILTON A. CANDLER.
E. JOHN ELLIS.
WILLIAM M. SPRINGER.
JERE N. WILLIAMS.

FEBRUARY 5, 1879.—Mr. PRICE, from the Committee on Elections, submitted the following

VIEWS OF THE MINORITY:

There has been two counts by the State board of canvassers in Florida; the first giving Mr. Bisbee a majority in this district of 141 votes; the second, made under a mandate of the supreme court of that State, gave Bisbee an increased majority; but contestant insists that in each count certain precincts were improperly rejected and others improperly counted. The committee have, therefore, preferred to start into this investigation, taking the entire votes cast in all the precincts and counties of this Congressional district as a basis of their investigation, whether the same were improperly counted or rejected by the State or county canvassing boards, and then make such deductions from or additions to the vote of contestant or contestee as the law and evidence demand.

The following table shows the entire vote cast in the district, canvassed and not canvassed:

Counties.	Whole No. of votes.	For Fin- ley.	For Bis- bee.
Madison	2, 803	1, 082	1, 521
Suwannee	1, 085	629	456
Hamilton	943	614	329
Columbia	1, 618	901	717
Alachua	3, 242	1, 255	1, 973

Counties.	Whole No. of votes.	For Fin- ley.	For Bis- bee.
Bradford	906	706	199
Baker	381	238	143
Nassau	1,464	670	794
Duval	3,803	1,468	2,331
Saint John	839	508	331
Putnam	1,196	617	579
Marion	2,510	962	1,548
Volusia	646	474	172
Orange	1,120	926	194
Brevard	167	111	56
Dade	13	5	8
Clay	441	315	126
	22,957	11,481 11,476	11,476
Finley's majority		5	

See printed record, pp. 179 to 204.

Contestant admits that some illegal votes were cast for him, which ought to be deducted from the above statement of the vote.

Contestee insists that said illegal votes amount to several hundred. They each insist that precincts included in the above table have been counted which should be rejected, and neither contestant nor contestee admits that this table shows the true vote cast at this election. Hence it becomes necessary to take up the questions presented and to decide them, in order to ascertain who is entitled to the seat from this district.

Contestant rests his case on two questions:

First. That the vote at Archer precinct, poll No. 2, in Alachua County, must be rejected on account of gross frauds committed by the election officers.

Second. That the vote of two precincts in Baker County and the vote of Clay County, which were not counted by the State board of canvassers in the second canvass (but are included in the above table), shall be counted because they were rejected without sufficient cause.

ARCHER PRECINCT, POLL NO. 2, ALACHUA COUNTY.

Archer precinct, in Alachua County, just prior to this election, was provided with two polling places to give ample facilities for voting. They are called Archer No. 1 and No. 2, and were located in the village of Archer, in the same building, in opposite ends of an old storehouse. The votes returned from these polls are as follows:

	Bisbee.	Finley.
Poll No. 1	54	98
Poll No. 2	399	141
Total	453	239

The contestant makes no objection to poll No. 1, and there is no proof in the record which attacks the return from that poll; but contestant insists that the officers of the election at poll No. 2 were guilty of gross fraud in the manner of conducting the election, and made out and returned a false and forged return showing more votes for contestee than were cast for him.

A large volume of testimony in regard to the frauds, forgery of the names of part of the officers to the returns, and gross irregularities and

disregard of the law, is to be found in the record of this case. In fact, both contestant and contestee agree that gross fraud was committed, disagreeing only as to who profited thereby. It is therefore unnecessary to quote the evidence on this point except so far as it bears upon other questions. It will be seen that the returns show 541 votes polled for Representative in Congress at this poll. Contestant insists that the return is false because at the close of the count of the vote it was publicly announced that Drew, the Democratic candidate for governor, had received 136 votes, and Stearns, Republican candidate, 180 votes, and that the vote for the other candidates differed very little from the vote for governor.

There is a conflict in the evidence as to who made this announcement, and whether it was made before or after all the ballots had been canvassed. Also, whether the vote cast for governor only was announced. Some of the witnesses swear that the vote cast for other candidates was also announced, including the vote for Congress. We think the weight of proof is that either Black, one of the inspectors, or Vance, the clerk, did, about the close of the canvass, announce the vote for governor as 136 for Drew, 180 for Stearns. And also stated that the vote for the other candidates differed little from the vote for governor. Much stress is laid on this announcement in argument, but there is no law in Florida requiring any announcement of the vote to be made by any one. And the announcement (an unofficial act) having been made by Black or Vance, who, it is insisted by contestant, were corrupt and committed both perjury and forgery, while acting in the official capacity of officers of the election at this poll, it would seem that little importance or weight should be given to an announcement made by them. Tucker, a witness for contestant, swears that about the time the announcement of the vote was made he took, from a tally-sheet kept by Vance, the vote according to the tallies, and that this tally-sheet showed 141 votes for Finley, 180 for Bisbee. Both Black and Vance are examined, and swear that this statement of the vote is untrue; that they alone counted the vote, and the result was 141 for Finley, 399 for Bisbee. Green R. Moore and Floyd Dukes are shown by the evidence to have done nothing in canvassing the vote, except to string the ballots and put them back in the box. Contestant also shows that Vance and Black returned the ballot-box to the clerk of the circuit court, claiming that they had returned the ballots as cast at that poll.

Moore also swears that there were but 277 ballots canvassed; that there were only 318 names on the poll-list; and the result announced was made up from the poll-list. At the county canvass, afterward, at the clerk's office in Gainesville, the box was opened and only 277 ballots were found in the box. The laws of Florida make no provision for preservation of ballots after they have been canvassed at the polls. Contestant also proves by Samuel T. Fleming, a Democrat, that he was at poll No. 2 during the entire day, except during the adjournment for dinner; that he occupied a favorable position to see the voting and voters; and that he took down on slips of paper the names of all persons who voted at that poll from the outside of the building. And he makes, as an exhibit to his deposition, a list of names which he says is a copy of a list kept by him there that day. He says that he is a merchant at Archer, and well acquainted with nearly all who voted. The list accompanying Fleming's deposition contains 305 names.

He testifies that all these voters were colored except 15; he gives the names of the white voters on his list. There is a conflict in the evidence as to how long Fleming was absent from the polls, and whether absent

more than once during the day, and whether voting did or did not continue during his absence. We deem it unnecessary to attempt to reconcile the testimony on this point, as it is clearly shown that persons voted at that poll at that election from the "outside of the building" whose names are not on Fleming's list. The proof clearly shows that the first person who voted was Frank Danzy, a well-known colored preacher in that locality; that they all stood back and called him to come forward and vote first, "for luck," and he did so, yet his name is not on Fleming's list. From this it is evident Fleming was not present when the voting commenced. Moreover, 17 other persons are called who swear they voted at that poll on that day from "the outside of the building." They were sharply cross-examined as to their residence, &c.; they are not contradicted and no attempt is made to do so. How many votes were cast from the inside of the building is not clearly shown, but it is shown that the number was not large.

This is contestant's case as to Archer, No. 2, and he asks that the returns be set aside for the reasons stated.

Contestee admits that the returns do not show the true vote as cast. He insists that the ballot-box was tampered with before the count was made, and that Democratic tickets were put in and Republican tickets taken from the box. He proves by Black and Vance that they made the count, and that the return they made was a true return of the *ballots found in the box*. Black testifies that he has been a resident for several years at Archer, and is acquainted with the people in that vicinity, and that he does not remember over ten Democrats who voted that day at poll 2, and was surprised to find so many Democratic ballots in the box.

He testifies he was offered a bribe by one Dr. Carew, a leading Democrat at Archer, to swear that the true vote cast at poll 2 was, for Finley, 141; Bisbee, 180. Carew is not called to contradict this statement.

Montgomery, the Republican candidate for lieutenant-governor, testifies that he received information from a friend, who was a Democrat, that some Democrats at Archer intended to have the ballot-box at Archer tampered with, and that Green R. Moore was relied on to do that thing.

Montgomery tried to prevent Moore's appointment as an officer to hold that election. Strict rules of evidence would perhaps exclude this testimony as hearsay, but this information seemed to be in accord with subsequent developments.

The sitting member also introduces testimony to show that Archer precinct is and has been a large Republican precinct. Witnesses state that in 1872 the Republican vote was about 200, the Democratic vote 40. In 1874, the Republican vote about 300, the Democratic vote about 30. The record and report in *Finley vs. Walls*, Forty-fourth Congress (at the election held in the fall of 1874 at Archer), was Republican 293, Democratic 23, giving a Republican majority of 268. It will be seen according to the returns that the Democratic vote increased from 1874 to 1876 *nearly nine hundred per cent.*, while the Republican vote increased a little more than fifty per cent. No proof has been offered to explain this extraordinary increase of the Democratic vote at this poll. The other precincts in this county show no material change in the vote of 1874 and 1876, while this precinct shows a Democratic increase of nine hundred per cent. This, contestee insists, is conclusive of fraud, taken in connection with the absence of any proof explaining it; and the further fact that Fleming, contestant's own witness, swears that during the recess for dinner he saw the ballot-box in the possession of two men named Washington and Edge, one a Republican, the other a Democrat.

Mr. Fleming's testimony on this point:

Q. Who had charge of the ballot-box during the dinner adjournment?—A. Mr. Edge and Mr. Washington. They were not inspectors, but were selected, one of them a Democrat, the other a Republican, to watch the box, and they stood up there and watched the box during that time, which was in public view.

Fleming testifies that he went to dinner; therefore he could not know what was done with the box in his absence.

Contestee, in explanation of the fact that the Republican vote in the precinct had slightly increased between 1874 and 1876, proves that a very considerable number of colored voters had come into the district because of the establishment of new sawmills, turpentine distilleries, and the opening up of turpentine orchards. Others have taken up homesteads from some public lands lying in the precinct. The evidence shows that some 400 colored Republicans were organized into Republican clubs at Archer and vicinity, that they were directed to and did vote at Archer, and that other Republicans not belonging to clubs also voted there.

The conclusion the committee have come to is that the officers of the election, or some of them, were guilty of gross fraud, and a reckless disregard of the law, in conducting the election, the canvassing of the votes, and making returns. This is more readily believed when it is shown in the proof that some of them have made contradictory statements of important facts connected with the canvass, count, and result of this election. Green R. Moore is shown to have made contradictory affidavits—one stating that the vote polled was truly returned; another that the return was false and fraudulent, and signed in blank. Floyd Dukes, another inspector, also figures in two contradictory affidavits, but there is some doubt, from the testimony, whether he was actually sworn to one of them. The character of Black, another inspector, is proven to be bad. They are all sworn in this case, contradict each other, and it is evident that some of them have sworn falsely. Under these circumstances we feel compelled to reject the returns from this poll as wholly unreliable and worthless to establish the true vote cast at that poll.

But the proof shows that an election was opened and held at a time and place established by law by officers legally appointed to hold an election at Archer poll, No. 2, and that many legal voters were there, and voted. In such cases we find that we are remitted to such other evidence as may appear in the record to ascertain the vote for contestant and contestee. We cite the following authorities on this point:

When a return is rejected legal votes are not lost; they may be proven by secondary evidence, and when thus proven may be counted. (McCrary's Law of Elections, section 302.) In which case each candidate must prove, by calling the voters as witnesses or otherwise, the number of votes received by him. (*Ibid.*, section 391.)

This rule was adopted, and the testimony of the voters held conclusive, in the following cases: Reed *vs.* Julian, 2d Bartlett, 823, 828, 832; Washburn *vs.* Voorhees, *idem*, 54, 60, 62, and 64; Lloyd *vs.* Newton, Clark's & Hall's R., 520; Vallandigham *vs.* Campbell (1858), 1st Bartlett, 223, 228, 229, and 230. See also report of Mr. Lamar, which was adopted by the House. Reed *vs.* Kneas, Brightly, 366, 371, 372.

In the case of *The People ex rel. Judson vs. Thatcher*, reported in 7th Lansing N. Y. Reports, the court held that the testimony of the voters was higher evidence than the returns. (pp. 280, 281, 282, and 286.)

In the case of Washburn *vs.* Voorhees, Hamilton Township was returned voting as follows: Washburn, 143; Voorhees, 498. Washburn called the voters themselves and showed that twenty-seven more votes

were cast for him than were returned; the returns were set aside, and the evidence of the voters taken establishing his vote. Mr. Voorhees, who received according to the returns 498 votes, made no effort to establish his vote. The evidence incidentally showed that four persons voted for him; these only were counted for him. The committee, in citing the authorities upon which they base their decision, say:

But the rejection of a return does not necessarily leave the votes actually cast at a precinct uncounted. It only declares that the return having been shown to be false shall not be taken as true, and the parties are thrown back upon such other evidence as is in their power to show how many voted and for whom. So that the entire vote, if sufficient care be taken and the means are at hand, may be shown, and not a single one lost notwithstanding the return is rejected. It is found, as has already been stated, that 170 votes were cast at this precinct for Mr. Washburn. There was also the testimony of four persons that they voted for Mr. Voorhees.

In *Reul vs. Kneass*, 584, *Brightly's L. Cases*, 366, 372, the court, in answering an objection urged to testimony of voter, said:

Let the doctrine be once established as constitutional law that an elector cannot be heard in such a case to prove how he voted, in order to establish the falsity of an election return, and the suffrage of every man in the country is placed under the control of the election officers, who may make him appear to have voted exactly as they please. According to this doctrine, if five out of six hundred voters in a given district should vote for one candidate, and their votes should all be returned as given to another, no adequate means exist in any body, legislative or judicial, in the commonwealth, to relief against so crying a wrong; for refusing to hear the testimony of electors to prove how they voted, the establishment of fraud, in such a case, would be impossible. (*Brightly's L. Cases*, 371, 372.)

In *Vallandigham vs. Campbell* (1858) there were three reports, and the report submitted by Lamar, and signed by four members, was finally adopted by the House.—(1st Bartlett R., 223, 228, 229, 230.)

In this report of Lamar's there is an elaborate review of all the authorities, English and American, upon the questions of the admissibility of the declarations and testimony of voters as to their qualifications, and for which candidate they voted.—*Id.*, 230.

This report says:

The admissibility of evidence, consisting of the declaration of voters, as to any matters concerning their own voting, has been settled in the British Parliament repeatedly and uniformly for over one hundred years, and is no longer to be questioned.—Id., 230.

The point was expressly and deliberately decided in the great New Jersey case in 1840, usually known as the Broad Seal case, and the evidence was unanimously received, and a large number of votes determined upon it. *This precedent has been generally approved ever since, and the undersigned attaches more importance to it than usual, because it was unanimous in a highly partisan case, and because of the great ability and distinction of the gentlemen who composed the committee.—Id.*, 231.

As to a number of voters whose declarations are given in evidence, it appears upon the paper and testimony that their attendance as witnesses could not be procured, but it is not necessary in such cases to first call the voter and see if he will claim his privilege of refusing to answer.—*Id.*, 231.

The authorities above cited fully sustain this principle, and show several cases where it has been acted upon both by Congress and the courts of the country.

Contestee in this case has called 298 voters, who swear that they voted for him at Archer No. 2 at this election. Witnesses also prove that 10 others, whose names they give, and who are dead or removed from the county since the election, also voted for him at this poll. Moore, one of the inspectors, proves that two others voted for contestee, but Moore is not corroborated on this point, without which we regard his evidence as of little value. Contestee shows by these voters that they were regularly organized into Republican clubs in that precinct; that the officers of their clubs distributed to them their tickets; fifty-four of them can

and did read or spell out the names on their tickets; they all swear they voted the straight Republican ticket. All of them when asked (which was a large majority of them) also swear from whom they received their tickets, giving the names of the leading Republicans of the district, who were the officers of the Republican clubs. These men who distributed the tickets, and who could read and write, were called, and testified that they did distribute tickets, and none but Republican tickets, to the members of their clubs (one of them the night before the election, the remainder of the day on the election), having been assigned to the duty of seeing that all Republicans who could not read were furnished with straight Republican tickets. It is proved by the voters themselves that they voted the identical tickets they received from the officers of their clubs, and they distributed none but straight Republican tickets. Exhibits of the ticket distributed and voted are made in the record, and show that the ticket included "For Congress, Horatio Bisbee, jr." Those who could read swear that Bisbee's name was on their ticket. Some of the voters who could not read recognized the straight Republican ticket they voted, by reason of the manner in which a flag was placed at the head of a ticket. The Democratic ticket is shown to have had a different flag. There is no evidence in the record showing that any ticket except the straight Republican and straight Democratic tickets were in circulation or voted at that poll during the day, and no effort is shown in the proof to have been made to distribute Democratic tickets among these colored voters. The absence of such testimony we regard as an important fact in the case. If Democratic tickets had been distributed among these voters at poll No. 2, contestant could easily have shown it; as he has not attempted to do so when his whole case rested on this poll, it must be presumed he could not. And surely, in the absence of all proof of this character, it cannot be denied that contestee is entitled to 308 votes which the voters themselves and corroborating testimony prove were cast for him. Now, contestant makes no effort to prove his vote in like manner, nor does he attempt to account for the extraordinary increase of the Democratic vote returned and claimed at this precinct. He puts Fleming's list in evidence, and admits the persons whose names are on the list voted at that poll at that election. Mr. Bisbee, having this list before him (the poll-book at this precinct was lost or mislaid), called 283 voters on Fleming's list, who swear they, together with eight others on this list, voted the full straight Republican ticket, including for Congress Mr. Bisbee. This would leave Mr. Finley 14 votes had he called the remainder of Fleming's list, and they had sworn they voted for him. The testimony does not show that there was but one Democrat among all the colored voters at this precinct, and he was appointed inspector at this poll. This clearly shows that the announcement made at the close of the poll, that Mr. Finley received 141 votes, Mr. Bisbee 180, is not true.

But contestant insists that, as witness Tucker looked over the tally-sheet which Vance kept, and found from it that the vote for him was 141, and for Mr. Bisbee 180, that he can and does rely on this proof to show that he received 141 votes.

This position we regard as wholly untenable. Contestant himself attacks Vance and Black; charges and insists he has proven that they are not only capable of committing fraud and forgery, but were actually guilty of these crimes as officers at that election, and were also guilty of perjury in making a false return and testing of the vote. Contestant, by his proof, aided by the proof of contestee, has convinced this committee that the official acts of the officers of this election, Vance included,

are unreliable, that gross fraud was committed, and the returns have been thrown out as contestant insisted should be done. How, then, can the committee go back and take a tally-sheet kept by Vance and regard it as evidence to show the number of votes received by contestant? Tucker, who says he took the figures from the tally-sheet, does not and cannot swear that the tally-sheet was correctly kept. Vance, who did keep it, swears that no such count was kept, and if it had been so kept would have been false. If such figures were found on the tally-sheet it is evident from the other testimony in this case that they were untrue. Tucker represents that the tally-sheet showed that Mr. Bisbee received 180 votes. Yet Mr. Bisbee has shown that he received at least 308 votes, which is 128 votes more than the tally-sheet gave him.

This is leaving out altogether contestee's theory that the ballot-box was stuffed before the count commenced. We cannot say that the officers of an election were false to their trust—guilty of gross frauds—and for that reason reject their returns, and at the same time say that the vote canvassed by them for Mr. Finley, as shown by a tally-sheet kept by them, is sufficient proof, or any legal proof, that he received 141 votes at that poll. We think that this position of contestant cannot be maintained on any principle of law or evidence. We cite the following authorities on this question:

When fraud or gross culpable negligence on the part of the officers of an election is shown, all their acts and doings are rendered unworthy of credit and must be disregarded. (See McCrary, section 303.)

We repeat, therefore, the opinion expressed in a former chapter: that a willful and deliberate fraud on the part of such an officer being clearly proven, should destroy all confidence in his official acts, irrespective of the question whether the fraud discovered is of itself sufficient to change the result. The party taking anything by an election conducted by such an officer must prove his vote by evidence other than the return. (McCrary, section 431.)

Where the conduct of the election officers is such as to destroy the integrity of the return, and to avoid the *prima facie* character which they ought to bear as evidence, due and adequate proof must be demanded of *each vote relied on*. (Opinion of the court in *Mann vs. Cassada*, 1st Brewster, page 60. See also *Thompson vs. Ewing*, a case from Pennsylvania courts, reported in 1st Brewster, 107; *Weaver vs. Given*, 1st Brewster, 140; *Given vs. Stewart*, 2d Brewster, page 2; *Jenkins vs. Hill*, N. H. Reports, page, 144.)

These well-settled principles show that contestant in a case like this cannot rely upon unofficial statements of the vote proven to be false, or a tally-sheet also proven to be false, to establish his vote. Indeed, they go further, and show that the returns being rejected for gross fraud on the part of the election officers, he cannot rely upon any act of theirs, official or otherwise, to establish his vote.

A "tally-sheet" is not mentioned in the laws of Florida. No such paper is required to be kept or returned. If such a paper was produced, it would be inadmissible as evidence, even if no question was made of its having been falsely kept.

But contestant seeks to establish his vote at this poll by the evidence of a witness who looked over such a paper and took down certain figures from it. When he insists, and the committee concurs, that the officer who kept it was so false to his trust and fraudulent in his conduct that his return of this poll cannot be accepted as the truth, and when other and reliable evidence clearly shows that the figures on said tally-sheet were false, certainly nothing in the rules of law and evidence will permit this.

In *Chisman vs. Anderson*, of Kentucky, first session Thirty-sixth Congress, the admissibility of any statement of the vote at a precinct not signed by the officers of the election was pointedly raised and settled. In that case the poll-book from Casey precinct was rejected as evidence

on the ground that it was not signed by any officer of the election. It was made out in due form and stated the vote for each candidate, but it was not signed, and the committee held that it was not admissible. On this decision the sitting member retained his seat.

Had such poll-book been admitted the contestant would have had a majority. (1 Bartlett's Rep., p. 334.)

The same question arose in *Barnes vs. Adams*, Forty-first Congress, and the result depended on its decision. Mr. McCrary drew the report, which, on this point, reads as follows: "We have already said that Glades precinct, in Pulaski County, must be rejected because it is not certified to be correct by any officer. *This objection is substantial and not technical. The paper purporting to be a poll-book for this precinct proves nothing whatever. To admit such a paper as evidence would be to set aside all rules and open wide the door for fraud.*" (2 Bartlett's Rep., 771.) In this case there was no *minority report*, and the report was adopted by the House without a division. (*Id.*, p. 760.) That the contents of a tally-sheet are not admissible under the laws of Florida was pointedly decided in the case of *Finley vs. Wall*, Forty-fourth Congress.

The report in this case, on page 22, reads as follows:

The law is that where fraud is proved to have been committed by the officers of an election in conducting the election, no reliance can be placed upon any of their acts, and their return must be rejected as wholly unreliable. The party claiming under the election must prove the actual vote in some other way. The only evidence as to what the vote was is from John V. Brown (page 79), one of the challengers, a Conservative, who says: "Finley got 11 and Wall 588, I think. I derived my information from being present and keeping a tally-sheet." This certainly cannot establish the vote, as his testimony at most can only be evidence of the actual number of votes cast, but one of the principal objections is that illegal votes were cast, and this, too, with the guilty knowledge of the officers of the election.

On this decision, excluding the contents of the tally-sheet, Mr. Finley *was seated*.

The law pointed out a plain and easy method, to wit, calling the voters themselves. This contestant has failed to do. On this point we think the language of the report in the case of *Read vs. Julian* very pertinent. The report says:

The committee therefore regards the fact that contestant made no effort whatever to prove the votes which he received, or to which he was entitled, in the district assailed by contestee, as very strong circumstantial evidence against him.

The only other satisfactory reason which we can assign is the fact that so many voters had been called and sworn on the other side, that not many were left for the benefit of contestant, even had he seen fit to make any effort to establish his vote at this precinct by calling and swearing the voter.

The committee are left without evidence that contestant received any vote at that poll, except that Moore swears he thinks Dukes voted for him. But as we have rejected two votes for Bisbee on Moore's testimony uncorroborated, we are compelled to hold this vote not sufficiently proved. Having rejected the return from this poll, we deduct from contestant and contestee the number of votes returned. Contestee having proven by other evidence that he did receive at that poll 308 votes, we add this number to his vote.

The total vote in the entire district as returned, and the vote in precincts not canvassed, was as follows:

	Bisbee.	Finley.
	11, 476.	11, 481
Deduct vote returned at Archer No. 2.....	399	141
	11, 077	11, 340
Add vote at Archer No. 2, proven by Mr. Bisbee.....	308	
Total	11, 385	11, 340

In the second canvass made by the State canvassers under mandate of the supreme court, there were two precincts in Baker County and the returns from Clay County thrown out. In the first count made by the State canvassers they were included. But Jasper precinct of Hamilton County was excluded.

We are unable to find sufficient evidence in the record to warrant the rejection of the returns from either of the precincts in Baker County or the returns from Clay County. And they are included in the foregoing tables, subject to the corrections on account of illegal votes, when we reach that subject.

This is the case on the side of contestant.

THE CASE OF CONTESTEE.



The sitting member has raised a number of questions in the record, some of them involving much labor and care in their investigation. First, that a large number of voters in the different counties in the Congressional district voted without having registered according to the laws of Florida. Second, that a large number of foreign-born persons voted without complying with section 3, Article IV, constitution of Florida. Third, that a large number of persons not possessing other legal qualifications of voters, under the laws of Florida, were permitted to vote (this includes minors, idiots, insane, non-residents, &c.). Fourth, that certain precincts included in the foregoing table should be rejected for the reasons set out in the pleadings and proofs. If your committee have correctly settled the questions involved at Archer No. 2, Alachua County, it would seem a labor not absolutely necessary to proceed to the investigation of other and difficult questions which cannot reduce, but may increase contestee's majority. But the sitting member insists upon an examination of the questions raised by him, because he says that the proof in the record shows his election regardless of any decision that can be made against him at Archer No. 2. It will be necessary to state some of the provisions of the constitution and statutes of Florida, to fully understand the law in regard to registration and to foreign-born voters. The present constitution was adopted in 1868, and Article IV of the constitution relates to elections. The sections bearing upon questions raised in the record are as follows:

SEC. 1. Every male person of the age of twenty-one years and upward, of whatever race, color, nationality, or previous condition, who shall at the time of offering to vote be a citizen of the United States, or who shall have declared his intention to become such in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months next preceding the election at which he shall offer to vote, shall in such county be deemed a qualified elector at all elections under this constitution. Every elector shall at the time of his registration take and subscribe to the following oath.

(Here the oath of allegiance to the Government of the United States and of Florida is set out.)

SEC. 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights.

SEC. 6. The legislature, at its first session after the ratification of this constitution, shall by law provide for the registration by the clerk of the circuit court in each county of all the legally-qualified voters in such county and for the returns of elections; and shall also provide that after the completion from time to time of such registration no person not duly registered according to law shall be allowed to vote.

The first legislature in Florida after the adoption of the constitution (1868) did provide for the registration of all the voters in that State, as directed to do by section 6 above quoted.

Section 7 of "An act to provide for the registration of electors," &c. (Laws of Florida, 1868, page 3), makes it the duty of the clerk of the circuit court in such county to prepare suitable books and lists for the registration of the names of all electors residing within such county. Then the statute provides a caption, in the form of an oath, to be placed in such book, so that each person registering would subscribe thereto. The clerk is also instructed when and how to make the original registration, and an oath is prescribed which is to be administered to each person when he registers.

SEC. 8. No person shall be entitled to vote at any election unless he shall have duly registered six days previous to the day of election.

Section 9 provides:

That the county commissioners shall meet at the office of the clerk of the circuit court within thirty days preceding the day on which any election shall be held and examine the list of registered electors, and erase therefrom the names of such persons as are known or may be shown to their satisfaction to have been dead, or ceased to reside permanently in the county, or otherwise become disqualified to vote: *Provided*, That if any person whose name may be erased shall, on offering to vote at any election, declare on oath that his name has been improperly struck from the list of registered voters, and shall take the oath required to be taken by persons challenged, such person shall have the right to vote.

Section 10 provides for furnishing the election officers at each precinct with a revised list of the registered voters of the county.

Unregistered voters.

The sitting member insists that a large number of persons at various polls in eleven of the counties of the district voted, never having been legally registered. He introduces, first, the poll-list, showing who did vote at each of the polls where such illegal votes were cast; then produces either a certified copy of the original registration-book, including the names of all persons who had been stricken off, or he produces a copy of the revised list of registration, together with a list of the names stricken off; thus presenting a certified copy of the names of all persons who have ever been registered since the adoption of the new constitution in 1868. By comparing the poll-list with the list of registration so produced, we find that many persons have voted who have never been registered. If they were sworn at the polls, as the statute demands, and took the oath that they had been registered and had been improperly stricken off, then they must have sworn falsely, for the record itself, the highest evidence, shows that they never were on the registration-book, and hence were never stricken off. The contestant in this case was the contestant in the Forty-fourth Congress, in the case of Finley *vs.* Walls. He was given his seat upon a decision that the votes not found on the revised list were not sworn as the law directs. In this case they never were registered, and such oath, if taken, would have been false. Their votes could not be received even if sworn. In that case the officers of the election were called and proved how many persons voted at each poll who were not on the revised registration-list supplied by the clerk. In this case the voters, as shown by record evidence, never did register. In the former case, where it was not ascertained for whom the legal votes were cast, they were deducted from the

vote each candidate received, according to a rule which seems now well established. It is proper here to notice an objection made by contestant in regard to the evidence concerning the names that had been "stricken off." He insists that this is no longer a record, and cannot be introduced as evidence. This might be true if in "striking off" or "erasing" the name of a voter from the "registration-book" it was so obliterated that the name could not be ascertained; but such is not the fact. The name "stricken off" is not so defaced that it cannot be made out. In fact, we find in some cases the only striking out that is done is the writing at the end of the name the words "removed," or "dead," or "convicted of felony," &c. (See Record, page 708 to 728.) Again, the proof shows in regard to the county of Alachua that the clerk of the circuit court, in order to prepare the revised list for the officers at the various polls at this election, handed his "registration-book" to the printer to prepare the revised lists necessary. But instead of printing a revised list, he printed the names of those who were stricken off as well as those who had not been stricken off. A pen had been drawn through the names of those stricken off, but they were still legible. (See evidence of Clerk Webster, Record, page 137.)

The clerks of the circuit courts furnish, in the record of this case, lists of names of all persons who have ever been registered in their county since the adoption of the new constitution in 1868. They certify that they are true and correct; they include the names of those who had once been registered, but are dropped or "stricken off" when revised lists are prepared to send to the officers holding an election. We think this evidence legitimate and proper. From these registration-lists and the poll-lists we can, by comparison, clearly ascertain the names of all persons who have voted but have never been registered. We also hold that persons who have never been registered could not legally vote. Upon this question we cite the following authorities:

Finley *vs.* Walls, Forty-fourth Congress:

If election officers receive a vote without preliminary proof, which the law makes an essential prerequisite to its reception, such vote is as much an illegal one as if the voter had none of the qualifications required by law.

Brightly's L. Cases, 453, 492, note.

State *vs.* Hilmoutel, 21st Wis., 566.

State *vs.* Stumpf, 23d Wis., 630.

16 Mich., 342.

Registration is, under the constitutional laws of Florida, an essential prerequisite before voting. The law tells the elector, unless you are registered you shall not vote. It tells the officers of election they shall not receive it. Hence, such illegal votes cannot be counted, either by the courts or by unbiased legislative bodies, even after they are put in the ballot-box. Where the proof shows for whom such illegal vote was cast, we deduct it from the candidate who received it. Where it is not shown for whom such illegal votes were cast, we adopt the well-settled rule which was followed in the case of Finley *vs.* Walls, Forty-fourth Congress. This rule is laid down by Mr. McCrary in his Law of Elections, section 298 (see authorities there cited), as follows:

In purging the polls of illegal votes the general rule is that, unless it be shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidate having the largest number.

Of course, in the application of this rule, such illegal votes would be deducted proportionately from both candidates, according to the entire

vote returned for each. Thus, we will suppose that John Doe and Richard Roe are competing candidates, and that the official canvass shows

For John Doe	
For Richard Roe	
Total	—
Majority for Doe	—

But there is proof that 120 illegal votes were cast. The illegal vote is 10 per cent. of the returned vote, and hence each candidate loses 10 per cent. of the vote certified to him. By this rule Doe loses $62\frac{1}{2}$ votes, Roe $57\frac{1}{2}$ votes, and the result, thus rendered, is as follows:

Doe's certified vote	
Deduct illegal vote	
Total vote	—
Roe's certified vote	575
Deduct illegal vote	57 $\frac{1}{2}$
Total vote	—
Majority for Doe	—

This seems to be now a well-established rule in questions like the before us. Below we have applied this rule, and the following table shows the result by counties:

TABLE OF VOTES TO BE DEDUCTED PRO RATA.

Loss to contestant and contestee.

	Contestant.	Contestee.
Hamilton County	81,895	4,000
Alachua County	52,351	1,000
Baker County	36,200	1,000
Columbia County	26,582	1,000
Suwannee County	39,092	1,000
Clay County	6,000	1,000
Bradford County	21,261	1,000
Orange County	23,742	1,000
Volusia County	15,792	1,000
Putnam County	2,000	1,000
Total	304,815	9,000

Bringing forward the vote for each candidate, after deciding questions at Archer, No. 2, to wit:

	Bisbee.	F
Deduct unregistered votes	11,385	1
	92	
	11,293	1

Foreign-born vote.

Contestee claims that 76 illegal votes were cast for contestant by foreign-born persons, a correct list of whom, with reference to the record is here given:

Alachua County.

1. Peter Dougherty voted for contestant, Record, p. 344.
2. Edward Wiel voted for contestant and admits he never was naturalized, Record, p. 358.
3. Moses Endel voted for contestant, Record, p. 359.
4. William F. Flynn voted for contestant, Record, p. 359.
5. Hymen Pinkosin voted for contestant, Record, p. 359.
6. William Schoeffin voted for contestant, Record, p. 362.
7. John A. Cellon voted for contestant, Record, p. 364.

Foreign-born persons who voted at Columbia County without producing their naturalization papers.

1. Carl A. Pneschell voted for contestant, Record, p. 453.
2. Daniel J. Crowley voted for contestant, Record, p. 454.
3. Julius Potzdlamer voted for contestant, Record, p. 356.
4. Frank De Leno voted for contestant, Record, p. 457.
5. Alexander Young voted for contestant, p. 458.

Nassau County — List of foreign-born persons who voted at the Fernandina precinct, in this county, without producing their naturalization papers.

1. Henry N. King voted for contestant, Record, p. 398.
2. Patrick Kelley voted for contestant, Record, p. 398.
3. C. H. Huot voted for contestant, Record, p. 399.
4. John Amen voted for contestant, Record, p. 399.
5. John Ellerman voted for contestant, Record, pp. 399, 400.
6. Albert C. Glaiber voted for contestant, Record, p. 400.
7. Richard H. Hobirk voted for contestant, Record, pp. 400, 401.
8. Mathew Downey voted for contestant, Record, p. 401.
9. John Hass voted for contestant, Record, pp. 401, 402.
10. Henry Peterson voted for contestant, Record, p. 402.
11. John McGuire voted for contestant, Record, p. 402.
12. Michael Fitzpatrick voted for contestant, Record, p. 402.
13. Julius A. Klotz voted for contestant, Record, p. 403.
14. Henry Barker voted for contestant, Record, p. 403.
15. James Kelly voted for contestant, Record, p. 403.
16. Gustav Stark voted for contestant, Record, p. 404.
17. P. W. O. Koerner voted for contestant, Record, pp. 404, 405.
18. Louis Lange voted for contestant, Record, p. 404.
19. Louis Lohman voted for contestant, Record, p. 405.
20. John F. Lohman voted for contestant, Record, p. 406.
21. William Schmitzer voted for contestant, Record, p. 406.
22. James McGiffin voted for contestant, Record, p. 406.
[McGiffin was inspector.]
23. J. H. Mooney voted for contestant, Record, p. 405.
Record, p. 397.
Record, pp. 406, 407.

Putnam County.—Votes of foreigners in this county without producing naturalization papers.

1. William Ivers voted for contestant, Record, p. 422.
2. George Muller voted for contestant, Record, p. 423.
3. John M. Ivers voted for contestant, Record, p. 424.
4. James Kennedy voted for contestant, Record, p. 425.
5. Edward Boyle voted for contestant, Record, p. 426.
6. John Beale voted for contestant, Record, p. 427.
7. Peter Peterman voted for contestant, Record, p. 428.
8. Andrew Shelley voted for contestant, Record, p. 429.
9. Frederick Tolley voted for contestant, Record, p. 429.
10. John H. Solowsky voted for contestant, Record, p. 430.
11. Bernard L. Lilliuthral voted for contestant, Record, p. 438.

Duval County.—Foreign-born persons who voted for contestant without producing their naturalization papers as required by the constitution.

1. Henry Peters, Record, pp. 547, 548.
2. Patrick P. Crolley, Record, pp. 548, 549.
3. Hugh Hearty, Record, p. 549.
4. Thomas Scales, Record, p. 550.
5. Joseph M. Mitchell, Record, p. 551.
6. Joseph Jacquemain, Record, p. 551.
7. Charles F. Poetting, Record, pp. 551, 552.
8. Patrick Falen, Record, p. 552.
9. John Murphy, Record, p. 552.
10. Charles Gebhart, Record, pp. 564, 565.
11. William Rich, Record, pp. 565, 566.
12. Herman Elkin, Record, p. 569.
13. Nickles Stobel, Record, p. 569.
14. Thomas B. Walsh, Record, p. 570.

15. Samuel Benlisa, Record, p. 570.
16. Mathew Mahoney, Record, p. 575.
17. Frank Crolly, Record, pp. 575, 576.
18. John Higgins, Record, p. 576.
19. Henry Van Dollen, Record, p. 576.
20. John Gray, Record, p. 577.
21. Joseph Sauto, Record, p. 577.
22. Lewis Chicony, Record, p. 580.
23. Isadore Grunthal, Record, p. 581.
24. M. C. Colleton, Record, p. 581.
25. Hugo Grunthal, Record, p. 582.
26. Jacob Grunbinger, Record, p. 583.

Volusia County.

- Frank Boremaster, Record, p. 494.
 Roderick Gillespie, Record, p. 494.

This list contains seventy-four names, for upon an examination of the evidence we are not satisfied that the other two persons were foreigners.

This is a similar question to that discussed above relating to unregistered voters. The qualifications of an elector in Florida are prescribed by the constitution of that State. It will be remembered that section 1, article 4 of the constitution, quoted above, prescribes the general qualification of voters. But a citizen of Florida cannot vote simply because he possesses these qualifications. There are other constitutional provisions which such citizen must comply with before he can vote. We have just seen that under section 6, article 4, constitution of Florida, "no person not duly registered according to law shall be allowed to vote." This applies to a native-born citizen. There is still another provision of the constitution which foreign-born persons must comply with before they can vote. It is as follows:

SEC. 3. At any election at which a citizen or subject of any foreign country shall offer to vote under the provisions of this constitution, he shall present to the persons lawfully authorized to conduct and supervise such election, a duly sealed and certified copy of his declaration of his intention, otherwise he shall not be allowed to vote. And any naturalized citizen offering to vote, shall produce before said persons lawfully authorized to conduct and supervise the election the certificate of naturalization, or a duly sealed and certified copy thereof, otherwise he shall not be permitted to vote.— (Acts of 1868; Constitution, section 3, pp. 211, 212.)

Now, contestant concedes that a vote cast by a person not registered is illegal. And it is too well settled to be disputed. Registration is a "necessary prerequisite" to be complied with by the voter before he can legally vote. The constitution of Florida makes another "necessary prerequisite" of a foreign-born person before he shall vote. It tells him he shall present to the officers of the election his duly certified and sealed "naturalization papers" or his "declaration of intention" (where he has not taken out his final papers), "otherwise he shall not be allowed to vote."

And it seems to us that the same principle must be applied in the case of foreign-born persons who did not present their papers, as the law required, to the officers at the election, that we have applied to unregistered voters. The requirement of the constitution is mandatory. It requires a certain thing to be done *by a foreign-born person*, "*otherwise he shall not vote.*"

It is urged by contestant that they were not challenged, and had they been required so to do, that in most cases they could have produced the papers the constitution required. We might say the unregistered voters were not challenged. They, too, could have registered if they knew the law required it, and they desired to do so. Each has failed

to do what the constitution of the State has commanded before they can legally vote.

This is not something the law requires of the officers of election. It is a requirement of the citizen, to qualify him to vote. The constitution of the State challenged his vote unless he complied with the supreme law of the State.

The right of suffrage is not a natural right, nor is it an absolute unqualified personal right. It is the right derived in this country from constitutions and statutes. It is regulated by the States, and their power to fix the qualifications of voters is limited only by the 15th amendment to the Constitution, which forbids any distinction on account of "race, color, or previous condition of servitude."—(McCrary, section 3, and cases therein cited.)

But the election franchise, like other rights, is not that of unrestrained license. In a Government of law, the law must regulate the manner in which it must be exercised. The time, and occasion, and mode of voting are to be prescribed by the legislature, except in so far as the constitution has a voice of its own on the subject, and therefore it is that laws have been created for election officers, regulating the hours of the day during which the election shall be held, and the proof necessary to establish the right to vote. * * * The elector's privilege is not therefore a mere constitutional abstraction, but it is to be exercised in subordination to law, and on proof of title of the person claiming its exercise. The right, however well founded in fact, may be lost for want of such evidence of titles as the law demands." (Opinion of court in case of *Batturs vs. Megary*, *Brewster Rep.*, vol. 1, p. 171; see also 2d *Bartlett*, 831.)

In Pennsylvania, persons not assessed for taxes were required by the laws of the State to answer certain questions under oath, concerning tax, age, and residence, and also to prove their residence by the oath of a qualified voter.

In the following cases it was distinctly held that a vote cast without complying with this statute was illegal and could not be counted. (*Mann vs. Cassada*, 1st *Brewster*, p. 12; *Myers vs. Moffett*, 1st *Brewster*, p. 230; *Weaver vs. Given*, 1st *Brewster*, p. 141; *Sheppard vs. Gibbons*, 2d *Brewster*, pp. 117-129.)

In *Brightly's Leading Cases*, p. 492 (note), the author says:

Votes received from electors whose names do not appear on the assessment list without the preliminary proof required by law were formerly held to be *prima facie* illegal and to be rejected from the count unless adequate proof were made on the trial of the legality of such vote. (*Mann vs. Cannada* and *Weaver vs. Given*.) But the modern and better opinion seems to be that such votes being illegal when received cannot be made legal by the production of evidence of qualification on the trial which ought to have been but was not produced to the election officers.

He cites *Sheppard vs. Gibbons* and *Myers vs. Moffett*.

In the case of *Sheppard vs. Gibbons* the court says:

A vote *prima facie* illegal must be disallowed if the voter did not at the time of offering it produce the preliminary proof required by law.—(*Brightly*, p. 558 and 572. See *Covode vs. Foster*, 2d *Bartlett*, 600 *et seq.*, and *Wright vs. Fuller*, *ibid.*, 159 and 160.)

Again, the statutes of Wisconsin provide that no person, not registered, should be allowed to vote unless he produced his own affidavit and the affidavit of a householder of the district of his residence in the district. In a case reported in 21st *Wis.*, p. 566, it is held that the affidavits must be produced, or the vote is illegal and must be thrown out.

This is an important case, and all the principles arising under section 3, article 4, constitution of Florida, concerning foreign-born voters are decided. In that case the officers of the election acted upon their own knowledge of the residence of these unregistered voters. They (the voters) did actually live in the district where they offered to vote, and could and doubtless would have produced the affidavits required by law if the officers of the election had required it. The court says no fraud nor

misconduct on the part of the officers of the election or voters was intended—the voters were not challenged; but the statute was imperative and the votes illegal. The statute in that case is as follows: “No vote shall be received,” &c. The constitution of Florida says: “Otherwise he shall not be permitted to vote.” If this was a statute and not a constitutional provision it is as imperative as the statute of Wisconsin; both use negative words, and to vote without complying with either is illegal and the vote cannot be counted.

The court in this case was unanimous. The questions are ably discussed, and decide that the voter is made by law the agent to execute it. An act is required to be done by him, and until he complies with the law, though he may in all other respects have the legal qualifications, he cannot vote.

The same principle is again confirmed in *Bancroft vs. Slumpf*, 23d Wis., 630.

We find no authorities in conflict with those above cited. Contestee shows by proof that 74 foreign-born persons voted without complying with sec. 3, art. 4, of the Constitution. Fifty-three of these testify themselves that they voted for contestant, four others that they voted the whole Democratic ticket. Seventeen others are called, and testify that they voted without producing the necessary certificates. They were asked by contestee for whom they voted for Congress, and were told by contestant's counsel they were not required by law to disclose that fact, and thereupon they refused to answer for whom they voted. We are of opinion, their votes being illegal, they were bound to answer, and refusing to do so at the suggestion of contestant's counsel is very strong presumptive evidence that they voted for contestant. Certainly in a case like this the same strictness in evidence would not be required as in ordinary cases.

Contestee, however, introduced witnesses (several are Democrats) who are well acquainted with these voters, and have known them for years. Some of the witnesses lived in the same precinct and had been candidates for office where these voters resided; they testify that each of these 19 voters are Democrats, adhere to the Democratic party, talked Democratic prior to that election, and had, theretofore, voted the Democratic ticket.

When a voter refuses to testify for whom he voted, it is competent to resort to circumstantial evidence, such as that he was an active member of a particular party, &c. (*McCrary*, sec. 293.)

The committee think they are fully warranted from the evidence to say that these 74 voters illegally cast their ballots for contestant, and they deduct this number from his vote. The record shows the following voters were illegal for the cause stated, and were cast for Mr. Finley:

J. D. Land, non-resident, voted at Jasper, Hamilton County.—Record, pp. 510, 511, 513, and 514.

Benjamin Bowman, a non-resident, same precinct.—Record, pp. 510, 511.

Wm. Ford, non-resident, voted at Waldo precinct, Alachua County.—Record, pp. 364-6.

Jno. F. Semple, ticket fraudulently changed without knowledge of voter; voted at Court-House, Columbia County.—Record, pp. 469, 470, 471, 472.

Lewis Niblack, minor, same precinct.—Record, pp. 476, 483.

W. D. Bellany, non-resident, voted at precinct No. 4, Columbia County.—Record, p. 462.

H. W. Hee, non-resident, same precinct.—Record, pp. 462, 463.
Americus Bivens (convict for felony), same precinct.—Record, pp. 463, 478, 479.
John Stone, non-resident, same precinct.—Record, p. 469.
Dock Mills, non-resident, same precinct.—Record pp. 480, 481.
Leon Gwynn, non-resident, same precinct.—Record, p. 483.
Wm. McNish, voted under duress, same precinct;
Stephen Thomas, voted under duress, same precinct;
Joseph Simmons, votes under duress, same precinct;
Thomas Boyd, voted under duress, same precinct.—See Record, from pp. 935 to 943.

Clay County:

Henry H. Green, non-resident.—Record, pp. 500, 501, 502, 504.
Elias Padgett, sr., non-resident.—Record, pp. 504, 559, 560.
Geo. H. Kersey, non-resident.—Record, p. 504.

Putnam County:

Henry Wamkee, idiot.—Record, p. 431.
Wm. H. Lannigan, non-resident.—Record, pp. 436, 437, 438, 439, 440.

Duval County:

Aaron Isaacs, non-resident.—Record, pp. 539, 540, 558.
Wm. Moore, non-resident.—Record, pp. 560, 561, 562, and 595.

[NOTE. Persons who had not resided 12 months in the State, or 6 months in the county where they voted, are included, and termed non-residents.]

Thus it is seen that 23 illegal votes, not included in the "unregistered" votes or the "foreign-born" votes, voted for contestant. The proof either shows they voted directly for Mr. Finley, or, as is the case in some of the districts, Mr. Bisbee received no vote, or proved the one or more votes he did receive by the persons who voted for him. Hence these 23 votes are to be deducted from Mr. Finley's vote. These, with the illegal foreign-born votes, make 97 more illegal votes to be deducted from Mr. Finley's vote, bringing down the result, to wit:

	Bisbee.	Finley.
	11, 293	11, 036
Deduct		97
	11, 293	10, 939

Bisbee's majority, 354.

Contestee assails in his pleadings several precincts in the various counties, and introduces much proof in the record concerning gross carelessness and violations of the election laws by the officers of election, &c. He raises various other questions, such as compelling voters to vote numbered ballots or be discharged by their employers, duress, requiring open ballots to be voted, &c. But without specifying even the precincts attacked or the other questions insisted upon, much less stating the proof adduced upon each question raised, your committee report that, after a very careful examination of all the testimony relating to these questions not yet discussed in this report, the proof is not, perhaps, sufficient to warrant them in throwing out other precincts or to change the result as above stated. There is no proof of absolute fraud sufficient to justify the rejection of the returns of these precincts. The officers of the election are censurable for their misconduct; but by the rejection of illegal and unregistered votes, as we have done above, we have concluded that the returns have been sufficiently purged, and the vote remaining is the true vote cast at this election. We find much to con-

demn in the carelessness and want of knowledge on the part of several of the officers who conducted the election, amounting in some instances to violations of the criminal law. But as the constitution of the State and the laws under it relating to elections changed the law at comparatively a recent date, there is some little palliation for their ignorance of the law of elections.

Your committee, in their examination of this contest, have attempted to generalize the facts and to classify them, so that they could be treated and discussed under their proper heads.

They found a mass of evidence, covering about 1,000 printed pages. More than 400 witnesses have been examined and much record and documentary evidence is also included. To have quoted the testimony setting forth the facts in detail would have drawn out this report to great length, and perhaps have involved it in some confusion.

The committee, satisfied of the correctness of the conclusion above stated, recommend the adoption of the following resolutions:

Resolved, That Jesse J. Finley was not elected and is not entitled to a seat in the Forty-fifth Congress from the second Congressional district of Florida.

Resolved, That Horatio Bisbee, jr., was elected and is entitled to a seat in the Forty-fifth Congress from the second Congressional district of Florida.

JAC. TURNEY.
J. M. THORNBURGH.

JOSEPH H. ACKLEN VS. CHESTER B. DARRALL.

THIRD CONGRESSIONAL DISTRICT OF LOUISIANA.

Contestant charged gross fraud and mismanagement on the part of the election officers and the returning board.

Held, That where the poll was removed from the place fixed by law to another and unauthorized place, such poll must be rejected.

Before courts or legislative bodies will give weight to results of recounts of ballots it must be shown absolutely that the ballot-boxes containing such ballots had been safely kept; that the ballots were undoubtedly the identical ballots cast at the election; and when these facts are established beyond all reasonable doubt, then full force and effect are given to the developments of the recount.

The return of the vote made by the Wells-Anderson returning board must be disregarded because of the most flagrant frauds, and of the exercise of judicial power by said board arbitrarily for no other reason than to achieve a result in accordance with their will. The count of the votes as declared by the present legal board of canvassers in all the parishes except Saint Martin's, La Fourche, and Iberville must be adopted.

The House adopted the majority report February 20, 1878.
Joseph H. Acklen sworn in.

FEBRUARY 8, 1878.—Mr. JOHN T. HARRIS, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested election case of Joseph H. Acklen vs. Chester B. Darrall, from the third Congressional district of Louisiana, submit the following report:

Contestant bases his claim to the seat in contest upon substantially the following grounds:

1st. That the action of the returning board of Louisiana (known as the "Wells-Anderson returning board"), in throwing out certain polls in the parishes of La Fayette and Iberia in the interest of contestee, was illegal, unjust, and fraudulent, and deprived contestant of over one thousand votes.

2d. That large and flagrant frauds were committed in the interest of contestee in La Fourche Parish, whereby contestant was deprived of several hundred votes, and that at poll 17 in said parish the fraud was so great as to vitiate and absolutely annul the election held at that poll.

3d. That the returns from Saint Martin's Parish were forged and false, and render null and void the votes cast in that parish at the election.

4th. That in the parish of Iberville, at various polls, and notably at polls 1, 2, 4, 5, 6, and 7, owing to the fraud, neglect, carelessness, or corruption of the election officers, many hundreds of votes having contestant's name were counted for contestee, and many hundreds of ballots which were blank as to the Congressman were counted for contestee.

To these and other allegations the contestee responded by a general denial, filing as his title and claim to said seat—

First, the certificate of Emile Honoré, who claimed to be secretary of state under the Packard government, and which showed the result of the election to be that indicated by the annexed table:

Names of parishes.	C. B. Darrall.	Jos. H. Acklen.
Ascension	2,059	1,215
Iberville	2,070	1,078
Assumption	1,692	1,677
La Fourche	1,869	1,687
Terrebonne	1,906	1,393
Saint Mary's	2,389	1,425
Iberia	1,443	922
Saint Martin's	1,095	1,027
La Fayette	654	638
Vermillion	228	955
Cameron	70	225
Calcasieu	91	1,291
Total	15,626	13,533

And, secondly, the contestee claimed that by the returns of the present board of canvassers under the present government he was also elected.

The contestant filed the following certificate issued to him by the present secretary of state. This certificate embraced all the votes as

cast and returned, with no polls thrown out, but with the parishes of Saint Martin's and Iberville excluded for the reasons therein assigned :

Names of parishes.	C. B. Darrall.	
	Jos. H. Acklen.	
Ascension.....	2,059	1,215
Assumption.....	1,692	1,679
Terrebonne.....	1,966	1,363
Saint Mary's.....	2,385	1,423
Iberia.....	1,455	1,242
La Fayette.....	661	1,157
Vermillion.....	228	955
Calcasieu.....	91	1,291
Cameron.....	69	225
La Fourche.....	2,915	2,080
Saint Martin's*.....		
Iberville.....		
	12,621	12,666

* This parish was rejected by the board of canvassers, whose report is hereto attached, the returns of said parish having been tampered with while in Republican hands. The parish gave a Democratic majority in 1874, as by reference to the report of the committee on elections and qualifications of the house of representatives. (See page 27 of the journal of the house of 1875, hereto attached.)

† The amount of votes for member of Congress in this parish before Hon. James Crowell, parish judge of said parish, as shown by the report of the board of experts, now on file in this office, a certified copy of which is hereunto annexed, shows the vote for member of Congress to be as follows: For Joseph H. Acklen, 1,595 votes, and C. B. Darrall 1,253 votes; while the return made by the supervisor of registration for said parish gave Joseph H. Acklen 1,078 votes and C. B. Darrall 2,070 votes. If the parish of Iberville is not included in the addition of votes, there being two different returns of the vote for member of Congress for the third Congressional district of this State, on file in this office, then the vote of Joseph H. Acklen is 12,666 and that of C. B. Darrall is 12,621, or a majority of forty-five votes in favor of Joseph H. Acklen. If the vote of Iberville Parish, as shown by the return of the parish judge and board of experts, is added to the above, then the vote stands as follows: For Joseph H. Acklen 14,261 and C. B. Darrall 13,874.

I, the undersigned, secretary of the State of Louisiana, do hereby certify that the above and foregoing consolidated statement of the vote is a true extract from the original returns made by the supervisors of registration of the election held in the above-named parishes for Congressional, State, and parochial officers of this State on the 7th day of November, 1876.

Witness my hand and the seal of the State of Louisiana, at the city of New Orleans, this 8th day of October, A. D. 1877.

[SEAL.]

WILL. A. STRONG,
Secretary of State.

The results of 15,626 votes for contestee, and 13,533 votes for contestant, as shown in the certificate filed by contestee, are obtained by the Wells-Anderson returning board having thrown out certain polls in the parishes of Iberia, La Fayette, and La Fourche, which polls showed large Democratic majorities.

This committee deem it unnecessary to demonstrate the utter unconstitutionality of the returning board law, and the utter illegality of the action of the members of said board in canvassing the returns of this election. The committee find a full brief on the law on pp. 19 to 22 Record, and a decision of the Supreme Court, pp. 3 to 12, discussing questions incident thereto. The contestee produces no sufficient evidence to sustain the action of the board; the very supervisor of La Fayette, J. A. Veazey, whose testimony is quoted further on, declares he did not make the protest upon which the board pretends to have acted in throwing out three polls in this parish. Poll 4, Iberia Parish, the only one thrown out here, is conceded to contestant by contestee (p. 56, contestee's brief), so the committee do not deem it necessary to refer to the evidence as to this parish. The polls of La Fourche are noticed under the testimony quoted from that parish. But, aside from these facts, the outrageous and fraudulent action of that board, as well as the questions of law connected therewith, have been twice made a subject of investiga-

tion and examination by two committees of the last House of Representatives, the deliberations and investigations of both of which have made the illegal and fraudulent action of this notorious board a matter of well-authenticated contemporaneous history, and inclines this committee to pay little heed to any result declared by it. The following testimony of J. A. Veazey, supervisor, and Charles Guidry shows the manner in which the secret affidavits upon which the board acted were prepared:

Testimony of J. A. Veazey (p. 166 Record).

J. A. VEAZEY, being duly sworn, deposes and says as follows:

Question. Please state your residence.—Answer. I reside in the parish of La Fayette.

Q. Were you or were you not supervisor of registration for this parish at the last election?—A. I was.

Q. Did you see or not the protest signed with your name which appeared before the returning board?—A. I saw it.

Q. Please state whether that protest was made from information received or otherwise.—A. It was made from information received.

Q. Did you know or not the facts contained therein?—A. No; because I did not read them.

Q. As far as you know, what was the character of the election in the parish?—A. Fair, as far as I could see.

Q. In making that protest did you intend the facts it contained as being of your own knowledge, or was it simply a report that you made from reports which came to you?—A. It was simply a report which I made from reports which came to me.

Q. Will you please state where that protest was made?—A. In the city of New Orleans.

Q. Did you pay any attention or not to it while it was being written?—A. I did not.

Q. Did you know or not that in signing that protest you were swearing to the occurrence of fraud, violence, and intimidation?—A. No, I did not.

Q. Do you know who wrote the affidavit which was given?—A. I do not remember.

Q. Were you told by any one that it was necessary to complete your returns to incorporate in them a protest based upon the affidavits of parties in the parish?—A. I do not recollect.

Q. Did you or not make out a new consolidated statement of votes excluding the polls objected to in the affidavit?—A. Yes; I made another one.

Q. How many polls were left out in the consolidated statement which you filed before the returning board?—A. Two polls.

Q. Do you remember the number of the polls?—A. Poll No. 1 I know was left out, and I think the other poll was Poll No. 3.

Q. Please state whether or not you think the polls which were excluded should have been counted.—A. I think they should have been counted.

Q. Did you swear or not to the returns filed before the returning board?—A. I do not recollect.

Q. Will you please state whether or not you returned to the parish to obtain a blank consolidated statement with the seal of court affixed?—A. Yes, I did.

Q. When you went to New Orleans with your first set of returns did you intend or not to file them before the returning board?—A. Yes, I did.

Q. Did any one tell you or not that it was necessary that you should make a new set of returns?—A. I do not remember.

Q. Were you told or not at the custom-house that it was your duty as supervisor to make a protest and new returns?—A. I do not remember who told me so, but was told so by some one.

Q. Was the statement made by you on the report of men who made affidavits before the returning board intended by you as an affidavit or protest against the election or not?—A. No, I did not intend it to be such.

Q. Please state whether or not you knew that your protest was to be used to throw out the vote of two polls.—A. No.

Q. Do you remember or not who made out your new consolidated returns?—A. I remember.

Q. Who was it?—A. Delahoussaye.

Q. Do you remember at what time you filed your second returns, which were made out by Delahoussaye?—A. I do not recollect.

Q. State where the new consolidated statement was made.—A. In my room, in the city of New Orleans.

Q. Were the affidavits made by Diaz, Marchand, and others ever read to you or not?—A. I do not recollect.

J A VEAZEY.

Testimony of Charles Guidry, colored (p. 169, Record).

CHARLES GUIDRY, being duly sworn, deposes and says as follows:

Question. In an affidavit made before one F. A. Woolfley, on the 28th of November, 1876, in New Orleans, and signed by you, you are made to relate threats on the part of the Democrats toward the Republicans at poll No. 1 in this parish. Please state what you know concerning said affidavit.—Answer. I only stated to Commissioner Woolfley the following facts: That I was a resident of the parish of La Fayette, ward No. 4; that I had lived in said parish since fifteen years; that I was a voter in said ward; that I was a member of the parish central executive committee in said parish and a leader among the Republicans; that the white and colored people in said ward were on good and friendly terms; that it never had come to my knowledge that there existed any organization of white men gotten up for the purpose of intimidating by night the colored people; that I was on the day of the late election in the town of Vermillionville, ward No. 3; that in said town everything went off peaceably, and the voters of both parties and colors looked like a band of brothers, sitting and eating at the same table; that I was there during the whole day of the election; that I knew not how many colored Democratic votes had been cast at poll No. 1 in Carencro, perhaps 15; that only one colored man told me from Carencro, the Sunday after the election, that his employer had threatened to discharge him because he had voted the Republican ticket; that that colored man did vote a Republican ticket which I gave him myself and saw him vote; that with this exception I knew of no intimidation having been practiced either at the poll in ward No. 2 at C. Trahan's, or at poll No. 1 in Carencro; that I knew not the names of either of said commissioners at either of said polls. I also warned the aforementioned commissioner and his clerks and all those present that I knew nothing more; that I was on amicable and friendly terms with the white Democrats of my parish, and I wanted to be able to face them when I returned there.

Q. Can you read and write or sign your name?—A. No; I cannot.

his
CHARLES + GUIDRY.
mark.

Further evidence for this parish is found in the testimony of John Clegg (p. 28, Record) and that of fifteen other witnesses (from p. 163 to p. 171, Record).

The committee decide this vote should stand as returned, with no polls rejected.

In La Fourche Parish the evidence goes to show great fraud on the part of the Republican managers of the election. The following testimony is from that given by Hon. J. D. Moore, state senator of that district (p. 79, Record):

Q. What was the character of the election itself as held in your parish? Were the electors who desired to vote the Democratic ticket permitted to do so?—A. The election in La Fourche was eminently a farce. It was conducted solely in the interest of one political party, and no opportunity was given for a fair, free, and full expression of the wishes of the voters. The polls in that parish were located, or rather public notice of their location was given, I think, forty-eight or fifty hours previous to the election. They were, on the next day or the day after—it was the day before the election—changed, and therefore it was impossible to communicate the notice of their location to the voters throughout the parish. The parish is about ninety miles long. We are without railroad or telegraphic communications, and it would have been physically impossible to notify all the voters where the polling-places were to be after we received the notice of their location; I mean it was impossible to notify them of their first location, and it was still more impossible after the change was made. They were first located in the negro quarters on the plantations, and they were afterward changed to the public road. These public notices were only given, as far as I know, in the town of Thibodaux. The people in the country knew nothing at all about them. They had to wait until the day of the election and run generally hither and thither to ascertain where the polls were to be. In the selection of the commissioners, the supervisor, M. A. Ledet, made it a point to select Democratic commissioners, living at a great distance from the polls to which they were appointed. For instance, Mr. Allen, living immediately opposite the town of Thibodaux, was appointed commissioner at a poll some thirty or forty miles below, I believe. No official notice was sent to him at all, nor, I believe, to any of the commissioners, and it would have been physically impossible for them to have reached the polls to which they had been appointed, even had they been notified and their commissions given to them at the time they were handed to them.

chairman of the Democratic committee. I would like to state that it was to the chairman of the Democratic committee that these commissions were given, and never to the commissioners themselves. They were never at any time notified by Ledet in person, that I know of.

Q. From your knowledge derived from your residence in your parish and from your political position there at the time of the election, what is your opinion and belief as to the number of votes lost to J. H. Acklen in the parish of La Fourche by the action of the supervisor of registration in the matter of registration, in the appointment of commissioners, and in the general management of the election of La Fourche?—A. Those facts, coupled with the conduct of colored Republicans with or toward colored Democrats, lost to the Democratic ticket, including J. H. Acklen, I am certain not less than 150 votes, because I do believe that if the colored voter had been permitted to vote as he was disposed a large number of them would have voted for the Democratic party or abstained from voting.

This is fully corroborated by the testimony of the supervisor of registration himself, M. A. Ledet, who confesses the part he took in the fraudulent registration and election, and afterward in the alteration or "doctoring" of the returns in the committee-room, whereby, as he states, J. H. Acklen was deprived of some two hundred votes.

The following is part of the testimony of said M. A. Ledet (pp. 73 and 83, Record):

Q. How was the registration conducted in that parish under your administration? Give a full and detailed account of it.—A. Well, I conducted the registration as fair as I could. Had I been left alone I could have done it fairly, but on account of the pressure that was brought to bear upon me by the Republican campaign committee, I was compelled to go according to their dictation. In the registration I took all the advantage I could. I suppose that I neglected the registration of the white voters of that parish to the extent of about 25 or 30, probably. I mean white Democratic voters. There were about that number that were prevented from registering. This was done by my being advised, of course, by the campaign committee to not remain long at one place, and to dodge about. I rejected, as far as I can remember, some 6 or 8 that I thought were not of age. That is about all about the registration.

Q. Were you not appointed supervisor with the distinct understanding that you were to carry the parish for the Republicans at all hazards?—That was the understanding, sir. Those were the questions put to me by the campaign committee when I received the appointment.

Q. How many votes do you think were lost J. H. Acklen by this peculiar mode of registration alone?—A. Well, I suppose about 25 or 30.

Q. That is, by the registration?—A. Yes, sir.

Q. Now, Mr. Ledet, how about the election? How, in reference to the placing of the polls, was the election conducted?—A. Well, in fixing the polls, I did it together with the campaign committee, and they insisted upon my locating the polls in the manner in which I did.

Q. Were those polls not so placed as to prevent many Democrats from voting by a neglect of a proper time of notification?—A. Well, yes, sir; and it being in the quarters.

Q. Were not colored Democrats prevented from voting the Democratic ticket by the situation of the polls in the quarters, where they were surrounded entirely by their own color, who were strongly Republican?—A. Well, to my knowledge there must be in La Fourche eighteen or twenty Democratic negroes, and they were rather afraid. In fact, they did not vote. They belonged to the Democratic-Conservative club in Thibodeaux, and they were really prevented from voting by their own race, because I have myself heard colored speakers in the parish say on the stand that any nigger that would vote the Democratic ticket, they ought to get together and not only kill him, not only that he deserved to be killed, but massacred and burnt up. I remember a man by the name of Cook making that speech at Stoddard school-house a couple of weeks previous to the election.

Q. Mr. Ledet, is it not a fact that at all the polls in the parish the Republicans had men stationed whose special business it was to examine the tickets of the colored voters as they came up, to see that they had a straight Republican ticket and prevent them from having any other?—A. Yes, sir; there were at each poll some four or five constables who were appointed for that purpose by me as supervisor.

Q. What number of votes were lost to J. H. Acklen by the failure to place poll No. 17 where it was ordered to be held, at the Allen warehouse, and which was really held back in some negro quarters about three miles from the road?—A. Well, the commissioner at that poll had instructions to hold the election on the road-side at the warehouse, and he disobeyed orders and went back there. He told me himself after-

ward that there were about fifteen or eighteen Democrats that would not vote on account of the poll being there, because Mr. R. H. Allen, who was the owner of the place, protested against holding the election there and disgusted those men from voting there. That information I had from the commissioner himself. I know myself that on that place there were at least fifteen or eighteen white men working there nearly all the year round.

Q. Had there been under the law a fair registration and a fair election held in the parish of La Fourche, giving neither party an advantage, and permitting the negroes to vote as they chose, and giving the facilities for voting which should have been given to the white Democrats, what is your opinion that the majority would have been for J. H. Acklen in the parish?—A. Well, in my opinion, I concede La Fourche to be from one hundred and fifty to two hundred Democratic majority if the polls were located properly and the voters were permitted to vote as they wanted to; that is, by placing polls convenient for them to get at them and the commissioners being at each poll.

Q. Then I understand that by this unlawful registration and election J. H. Acklen has lost about two hundred votes in the parish of La Fourche?—A. Yes, sir.

Q. Mr. Ledet, were you at any time previous to the election presented with a certain list of men deceased, and minors, and convicts, and felons, and absentees, &c., by one L. O. Moreau, Democratic United States supervisor, to have the names of those parties stricken from the rolls of the registration books?—A. Yes, sir.

Q. Did you act upon this list to the full extent of the names presented to you?—A. I erased a few of them, not all.

Q. Do you not know that many names thereon that should have been erased you failed to erase?—A. Well, I suppose there were some.

Q. In the consolidated return made out and filed in the secretary of state's office, was any notice taken of that fact that you have just stated?—A. No, sir; not that I know of.

Q. Who made out this return? Did you make it out in person?—A. Jules Sevignes made it out. He was a candidate for the house of representatives, and he made out the return in the committee-room.

Q. Is this the original which was made out by him? (Shown original consolidated return on file in the office of the secretary of state.)—A. This original consolidated return was made out in the committee-room in La Fourche. This other one (referring to certified copy of the said original) was made in New Orleans.

Q. Who made out the second one?—A. Sevignes copied it.

Q. Is all the document in Sevignes's handwriting except your signature there?—A. Yes, sir; the whole of it is in his handwriting, with the exception of my signature.

Q. Did Sevignes return himself elected on this consolidated return?—A. Yes, sir. (Mr. Merchant objected.)

Q. When you signed this return as made out by said Sevignes, had you carefully examined it to see whether it was correct?

(Mr. Merchant objected.)

A. No, sir.

Q. Did you find out afterward that the aforesaid returns, as signed by you, were incorrect?

(Mr. Merchant objected.)

A. Well, yes, sir. I will tell you how these returns were made out: In the first place, every statement of votes and tally-sheet that were sent out to the different polls was made out in pencil; and when they were brought to me the return was made and the tally-sheets were copied over in ink. That is how the first copy was made. The tally-sheets were doctored in the committee-room.

Q. Then, in reality, you did not yourself make out the return that came from the parish of La Fourche and that was submitted to the returning board?

(Mr. Merchant objected.)

A. No, sir.

Q. The entire returns as made and filed with the board were made out by the aforesaid Sevignes?

(Mr. Merchant objected.)

A. The statement of votes, or rather the consolidated statement, was. Now, there were two or three others that helped me to copy the tally-lists. There were some five or six of them.

Q. To what extent now have you ascertained that the return from your parish, as made out by the aforesaid Sevignes, is incorrect? In other words, how many votes were lost to J. H. Acklen by this return which should have been credited to him?

(Mr. Merchant objected.)

A. According to the statement that I have already made, I think you lost some two hundred votes.

Cross-examination by Mr. MERCHANT:

(Mr. Merchant said he cross-examined this witness with reservation of all legal objections to his testimony.)

Q. Mr. Ledet, you signed this return mentioned by you?—A. Yes, sir.

Q. Did you compare those returns with the commissioner returns to see that they were correct before signing them?—A. Well, no, sir; they were not compared, because the commissioners' returns were doctored or changed in the committee-room, as I have already stated. All the statements of votes and all the commissioners' returns were made pretty much in pencil.

Q. How do you know that fact?—A. Because I was there and saw it.

Further evidence sustaining the foregoing is found in the testimony of M. W. Billier, p. 132, Record; A. Rovira, pp. 132, 137, Record; H. H. Michelet, p. 39, Record; Albert Brooks, p. 134, Record; E. A. O'Sullivan, p. 137, Record; O. B. Morgan, p. 40, Record; T. Chatton Davis, p. 31, Record; I. O. Landry, p. 128, Record; Robert Poindexter, p. 30, Record.

In the evidence offered by the contestee in the testimony of Tayler Beattie, p. 242, Record, Charles Gaudé, p. 181, Record, and Jules Sevignes, p. 184, Record, many of the statements of the witnesses on behalf of the contestant are qualified; but it is the opinion of the committee that the facts educed in this parish show that contestant was deprived of a large number of votes, and that the returns as rendered, viz, J. H. Acklen 2,086, C. B. Darrall 2,015, do not show all the votes which the contestant would have received had the election and registration been fairly conducted. But this committee are without any exact figures upon which to base any change of the vote for the contestant, although this Republican witness declares that Acklen was defrauded of over 200 votes, and so let that vote remain as returned.

The evidence, however, goes to show that the vote of poll 17, where 86 Republican votes were cast and not one Democratic vote, which was held at a place unauthorized by law, and about one mile from the place legally appointed, with no Democratic commissioner present, and appears to have been so held for the express purpose of preventing any Democrats from voting there, should be rejected and not counted. Without quoting the testimony, this committee, after a careful examination, feel they are correct in adopting the language of the supreme court of Louisiana, which in rendering a decision on this poll said (p. 9, Record):

The reason of the rule invoked is, however, very manifest, and the circumstances attending the removal of poll 17 from the place fixed by law to another and unauthorized place make it more the manifest. The object of the change is proved to have been to take unlawful advantage of political adversaries; in other words, to defraud the law and prevent a fair, full, and independent expression of the popular will. Courts cannot lend their aid to such a purpose. It was no more legal to hold an election where it was held and returned, as that from poll 17, than it was to hold it at any other time than that fixed by law. It is well settled that cannot be done. There was no election held at poll 17 in the parish of La Fourche on the 7th of November last. We have been unable to find and have been referred to no case where votes cast under similar circumstances have been counted to determine an election. Our conclusion, therefore, is that what purports to be the return of this poll should not be counted or considered in determining the result of the election.

Thus the vote for this parish of La Fourche is determined by this committee to properly be, exclusive of the vote of poll 17, rejected:

J. H. Acklen	2,086
C. B. Darrall	1,929

SAINT MARTIN'S.

Pending the printing of the Record in this case, the contestee appeared before the committee and claimed that some of his testimony taken in

this parish was mislaid, and requested twenty days to retake same. To avoid delay an agreement then was entered into between the contestant and contestee (p. 283, Record) predicated upon the supposed loss of said testimony. The next day the testimony was found in the hands of the Public Printer, where, by accident, it had gone with contestant's papers, and had been printed; it is found on pp. 153, 154, 155, and 156, Record.

By this agreement the vote of this parish is declared to be:

J. H. Acklen	1,027
C. B. Darrall	1,095

These returns the present board of canvassers refused to canvass, alleging (p. 13, Record) that the same had been tampered with or forged. The evidence of contestee, pp. 153, 154, 155, and 156, Record, does not touch on this point at all, but inasmuch as the general result is not affected by the above vote as agreed upon, and inasmuch as contestee strenuously insists upon the agreement, the committee, though of opinion that said agreement was superseded by the subsequent discovery of the evidence, are inclined not to disturb it.

IBERVILLE.

In the parish of Iberville contestant relies upon a recount of the ballots had under an order of court on March 6, 1877. This was four months after the date of the election.

Before entering upon an examination in detail of the features and circumstances of this recount, your committee would remark that they were impressed with the fact that the law regards with jealousy and suspicion recounts of ballots, and is slow to sanction any change from results originally declared to results effected by such recounts.

The rules of law governing recounts of ballots are plain and positive. Before courts or legislative bodies will give weight to results of recounts of ballots, it must be shown absolutely that the ballot-boxes containing such ballots had been safely kept; that the ballots were undoubtedly the identical ballots cast at the election; and when these facts are established beyond all reasonable doubt, then full force and effect are given to the developments of the recount. After full examination of the evidence your committee found no difficulty whatever in arriving at the conclusion that in this case the ballot-boxes had been preserved; that they had never been tampered with, and that the ballots found in them were the identical ballots cast at the November election.

Another objection to the consideration of the recount urged by contestee is that the time between the election and the recount was some four months, and that the time for the preservation of the boxes by the clerk, under the laws of Louisiana, had expired. Section 13 provided in substance that the clerk of the court should safely keep the ballot-boxes, after delivery to him by the officers of election, until after the next regular term of the district or criminal court for said parish. Contestee urges that the next regular term of the district or criminal court for the parish of Iberville was in January, 1877, two months after the election, and that after the lapse of said term, the law no longer obligating the clerk to safely keep the ballot-boxes, a recount of such boxes or their contents was illegal. The facts are that the time for holding the term of the regular district court was in January, but no court was held. There were two claimants to the office of district judge. One of these claimants (and the one, too, who was afterward declared not to be the judge) went through the form of holding court; but no business whatever was transacted, and no regular term of court was held until the

month of April. But granting the fact that the term of court had elapsed between the time of the election and the recount, would that fact abridge the power of Congress in determining the rights of claimants to seats in its body to take the ballot-boxes, no matter what might be the lapse of time; and if satisfied that the boxes had not been tampered with, and that the ballots contained in them were the identical ballots cast at the election, to open the boxes, count the ballots, and decide in accordance with the result of said recount? But the committee find, after thorough examination, that contestant could not have obtained the recount at a date earlier than it was effected. The election took place November 7, but the Wells-Anderson returning board did not declare any result until nearly two months afterward. After that declaration the contestant gave notice of contest, which was given within the time required by law. During this time, and until the Nicholls government was established in Louisiana, the state of affairs was such that few or no courts transacted business, and it was not until the month of February that the board of canvassers under the Nicholls government declared any results. And thus awaiting final action of these two boards of canvassers were any proceedings by contestant delayed; and, further, the answer of the contestee to notice of contest bears date "Washington, D. C., January 20, 1877," and appears to have been served some time thereafter. Thus the recount? which took place early within the first forty days, granted the contestant by law, was effected at as early a date as the case permitted.

The proceedings of this recount (on pp. 63, 64, and 65, Record) appear to this committee to have been even unusually formal, and perfectly just to both parties, who were present; the one in person, the other by attorney. Nor is any evidence offered or claim made by contestee that this recount was not fairly conducted as between the parties in contest; that the judge, a Republican, presiding, did not act in a fair and impartial manner, and that the recount was not duly attested and authenticated; all of which facts appear affirmatively in the evidence offered by contestant. The law directing the preservation of the ballot-boxes and ballots for such recounts is found in section 13, act 1872, election law of Louisiana; and that this law had been complied with is shown in the testimony.

Authority for recounts in such cases is found in McCrary, section 280; 2 Parsons, 599; Thompson *vs.* Ewing, 1 Brewst., 192; 2 Brewst., 2; 1 Brewst., 67 and 69; 2 Parsons, 537, 548, and 553; 65 Penn. St. R., 36; 1 Brewst., 162; Cooley's Const. Lim., p. 625.

That the contestant specified particularly the grounds upon which he relied is apparent from the pleadings. That the proof as to an incorrect original count, and the failure to count votes which witnesses swore to having voted, was fully established before the boxes were ordered to be opened by the court, is likewise shown.

Many of the commissioners of election were called in previous to the opening of the boxes at said recount, to identify the seals and their signatures as being intact, and except at poll 7, where the box had been sealed but not signed, they did so identify them; that the former and present clerk of court, in whose possession the law placed these boxes for safe-keeping, were also sworn, and testified that they had been safely preserved, is also shown. James Crowell, parish judge, former clerk, pp. 59 and 115 Record, says:

Q. Were those boxes safely in your possession, Judge Crowell, until you delivered them to your successor?—A. Yes, sir.

Q. Would it have been possible for any one to have tampered with those boxes without your knowing it?—A. I think it would have been impossible.

Q. Were not those boxes in your office with their faces or fronts turned out, exposing the seals in such a way that had they been interfered with at any time the fact would have been noticeable?—A. Well, as they came in I placed them with the seals out, in the main office, where I sat myself, and I took the seals and faced them outside between the end and the records of the parish court there.

Q. Are the fastenings of this court-house secure?—A. Yes, sir.

Q. Would it be possible for any one to come in here at night or at any other time without your being aware of it?—A. Not without breaking the windows.

Q. You were present at the time the commissioners examined their boxes and identified them as being in the same condition as when delivered to you?—A. Yes, sir.

Q. You were also present at the recount of these votes?—A. Yes, sir.

Q. Were those boxes at the recount in the same condition as when they were delivered to you?—A. Yes, sir; the same as when I got them.

J. A. Landry, deputy clerk of court, p. 62 Record, says:

Q. Mr. Landry, you have access to the court-house at all hours?—A. Yes, sir; I have a key to the clerk's office, and previously I had a key to the sheriff's office. I have access to the sheriff's office, I believe, since the 9th of January last.

Q. Have you ever at any time left the court-house or the clerk's office open, or in such a way that any one could come in here and tamper with these ballot-boxes since they have been in the clerk's office?—A. Well, no, sir; I never have. Whenever I was absent or went away, the clerk himself was here. I have never left it long enough to know that any one could tamper with them unless I should have caught them at it.

Q. Then can you testify that to the best of your knowledge and belief while you have been here these boxes have been safe?—A. Yes, sir; I have always seen them there, and to my knowledge they have not been tampered with.

Q. You see the boxes every day or two?—A. Yes, sir.

Q. If they had been tampered with over night or at any time, would that fact have been noticed by you, do you think?—A. Yes, sir; so far as I know the boxes have never been tampered with so far as taking any papers out or adding any papers to them, or anything of that kind.

C. H. Gordon, clerk of court, pp. 66 to 110 Record, says:

Q. You are, at present, clerk of the parish court?—A. Yes, sir.

Q. You are, at present, in custody of the ballot-boxes in this court?—A. Yes, sir.

Q. Who delivered them to you?—A. My predecessor, Judge Crowell.

Q. Have those boxes been in your possession ever since they were delivered to you up to the present time?—A. Yes, sir.

Q. Can you swear positively, beyond all question, that, to the best of your knowledge, these boxes have been safely in your keeping up to the present time?—A. Yes, sir.

Q. Are the fastenings of the clerk's office here secure?—A. Yes, sir. Always, when we go away from here at night, we fasten these windows on the outside, and when they slam they cannot be opened from the outside at all.

Q. If there had been any entrance made into the building during your absence from it, could you have detected it?—A. Yes, sir. They would have had to break the lock or pulled the wedge from the fastenings of the windows. I am here during the day all the time.

Q. From whom did you receive the ballot-boxes?—A. From Judge Crowell, my predecessor.

Q. Can you swear positively, to the best of your knowledge, that while those boxes have been in your possession they have not been tampered with?—A. Yes, sir; I can swear positively that while those boxes have been in my possession they have never been touched at all. They were handed over to me when the judge vacated the office, and they were in that other room piled up from the floor, one on top of the other; and I moved them from there and put them under this table, which then stood by that window, and after that I cleaned up here a little bit, and I moved this table over here and put the boxes where you find them now, on top of the table. I handled them around, and I might have handled them carefully if I had thought there was going to be a contested election case; but, not knowing anything about it, I did not pay much attention. I might have left them where they were.

Q. Were not those boxes piled up in the room with their seals facing outward, so that they could be seen every day as you came in?—A. Yes, sir; they were turned right around the reverse of the way they are now in that room on that other side.

Q. If those boxes had at any time been tampered with over night, could you, on the next day when you came in, have noticed that fact from the difference in the papers and in the seals?—A. Easily, sir. I would not only notice the fact of the boxes having been tampered with, but I would notice the fact that some of these windows and doors had been tampered with in order to get in here.

Q. Would it be possible for any one to enter this office where these boxes were kept without leaving some traces?—A. No, sir.

Q. Are the fastenings of the windows and the doors secure?—A. Yes, sir.

Q. Are you or some of your deputies here always during the day?—A. Yes, sir; I am here nearly all day from the time I come here in the morning. I get here about 7 o'clock, and go to dinner, and I am back here about 1 o'clock, and I stay until I lock it up myself at night.

Additional testimony of the commissioners themselves, showing conclusively that the ballot-boxes, when brought forward for the purpose of the recount, had not been tampered with, will be noticed further when each poll is taken up separately. Suffice it to say that the evidence is *conclusive* that the ballot-boxes had been safely kept, and had not been tampered with between the time of the election and that of the recount.

Such being the case, the presumption follows that the ballots found in the boxes when the recount was made were the identical ballots cast at the election. The peculiar character of the case, and the fact that in the parish of Iberville the party of which contestee was the nominee was largely in excess of the other party, render it necessary for the committee to notice at some length the history of the election in that parish, and to set forth the causes which operated to deprive contestee of his party strength. It is true that Iberville is largely Republican, but the evidence is conclusive that the leaders of the Republican party in Iberville, as well as some of the most prominent Republicans in the State, were opposed to the election of contestee, and combined to defeat him. The testimony of W. W. Wharton, pp. 33, 121, Record; Wailes, R., p. 116; Gordon, R., p. 108; Robertson, R., p. 103; Holmes, R., p. 113; Ennis, R., p. 90; A. J. Gordon, R., p. 96; Loud, R., p. 67; Bess, R., p. 97; Commager, R., p. 99; Hunter, R., p. 90; Barnes, R., p. 93; Deslonde, R., p. 43; Roberts, R., p. 84; Weightman, R., p. 85, as well as that of others, shows very strong opposition to the election of the contestee in Iberville Parish on the part of the Republicans themselves.

The following, from the testimony of Hon. W. W. Wharton, pp. 33, 121, Record, sheds much light upon the manner in which this fight within the Republican ranks against the contestee was conducted:

Q. Then, what was the decision and determination among your friends and yourself in reference to Dr. Darrall's defeat?—A. The determination was come too early in the year that if I would take hold of the canvass here and organize the party thoroughly, I should be supported for the senate throughout. When it was ascertained that Wakefield was a candidate, and information was given that Dr. Darrall was supporting Mr. Wakefield, and the conduct of Dr. Darrall appeared to me conclusive that he was supporting Wakefield and giving me merely a negative assistance in this parish, whilst opposing me elsewhere, I called my friends together to discuss the matter. We discussed it many times, and we came to the conclusion that we would hold the matter over the doctor's head; that we would not indorse him in the proceedings of our convention; that we would hold it over, him and that I would talk to him and notify him, and that some of my friends would talk to him, and sound him, and ascertain his views in reference to the matter; and that in case it was necessary to proceed to extreme measures to force him to support me, the regular nominee, we should do so. Most of my personal friends were very active in the matter. Others of my political friends were negatively acquiescent about it; but the entire direction of the matter in this parish was in my hands, as far as the canvass was concerned.

Q. Was not the election also in your hands, in so far as regards the printing of the tickets, the general management of affairs, the distribution of the tickets, &c.?—A. After the preliminary organization of the parish, and after we had secured the parish committee and the parish convention, I was appointed by the committee as chairman of the campaign committee of the parish, with power to conduct the canvass, arrange meetings, disburse funds, print tickets, and do everything else in reference to the matter. I was appointed at a meeting of the committee. I believe the vice-president, Judge Crowell, was in the chair at the time.

Q. What were your reasons for keeping the matter a secret in the parish of Iberville to a certain extent except as among your particular and personal friends?—A. For this reason, that I wanted to do two things, to be elected myself and to beat Dr. Darrall. To do this it was necessary to avoid any handle that the opposition to myself

might take up. I was opposed very bitterly here by Senator Allain and his friends who would have seized upon anything of the kind as a weapon to fight me with. During the day of an election it is very easy to get up quite a disturbance by anything of that kind. On consulting with my friends, we agreed that the leaders should be thoroughly conversant with the matter themselves, sound their own leading men, have it understood, and carry it out that way. In certain localities of the parish where the opposition to me was strongest, we would proceed quietly and do but little.

Q: Did you yourself bring up from New Orleans those tickets that were printed with Darrall's name on them, others that had the name of J. H. Acklen on them and others with the name of the Congressman left in blank?—A. Yes, sir; I had the printed myself and brought them here.

Q: Where did you have them printed?—A. In New Orleans, by a man by the name of Hopkins, on the corner of Camp and Common streets, in the Storey Building.

Q: Did you distribute all those tickets yourself?—A. All that I brought up, nearly all; there were a couple of hundred, perhaps, that I did not distribute. I gave out every ticket myself.

Q: Give the names of some of those men that you distributed tickets to.—A. I will give the names of all of them. I will state, in the first place, that I gave to no one only one kind of ticket; that is, I gave to no one a ticket that did not have Dr. Darrall's name on it without at the same time giving him a ticket with his name on it. I gave Mr. Deslonde tickets with Dr. Darrall's name on, tickets with Mr. Acklen's name on, and tickets without either name on; I gave the same to Mr. Davidson, Mr. Barnes, to Mr. Ennis, and to Mr. Harris, who were both together; to Preston and to Robertson, from the third ward, who were both together, and to Mr. Gordon in town here, who came to the house for them. I sent some by Mr. Tate and by some one else that Davidson sent here from Bayou Goula to get some tickets.

Q: Were you not surprised on the next day after the election at the returns made by the commissioners in regard to the Congressional vote?—A. I was not surprised at all when I found out how the votes had been counted. I was at half a dozen different polls during the day, and I was here at this poll when they counted the votes. I saw them commence to read off the tickets and thought it was all right and went off to get my supper or a drink or something, and when I came back I found that they had counted only half a dozen tickets in that way, and had then commenced to count them all in bulk. That was, may be, an hour or three-quarters of an hour after the counting commenced. Just about that time the box from the third ward came in, sealed and delivered, and I asked Mr. Talbot, "How did you get through so quick as this?" He said, "We counted the votes straight in bulk." Then I knew that the votes in that box had been counted straight. I said, "You counted all the black tickets straight Republican?" He said, "Yes, and all the others the same way." Then I knew that all the Republican tickets that had your name on them and all the blanks had been credited to Darrall. Whilst I was considering my mind whether I should insist upon a recount, the box from the Wharton school house came in, and I asked Mr. Bruce, "How did you count the votes there?" He said, "We took all the black tickets and tallied them straight, and then read the scratched tickets." He said, "Why?" "Why," I said, "I thought you would read them out one by one." A little while afterwards he came back to me and said "Noland tells me that you had some tickets printed with Acklen's name on them." I said, "Yes." Said he, "Do you think there was any in our box?" I said, "I know there was one in there, for I voted one myself." He said, "We counted it for the doctor, then." He said, "What are we going to do about it now?" I said, "I do not know; you had better let it alone." I had come to the conclusion that it was better to let it alone until I saw what was the next best thing to do.

It is not gainsaid that the regular Republican tickets for this parish were all in the hands of Wharton for distribution, nor that the straight Republican black-back tickets on which contestant's name appears were printed and distributed before the election. Out of the 12,000 printed for this parish 6,000 bore the name of contestant, 4,000 were blank as to member of Congress, and 2,000 had the name of contestant. That they were quietly distributed throughout the parish the night previous and the day of the election is shown in the testimony of W. W. Wharton (Record, pp. 33, 121), C. H. Gordon (p. 108), James I. Bates (p. 57), E. A. Verrett (p. 270), P. G. Deslonde (pp. 42, 202), Preston Robertson (p. 103), A. J. Barnes (p. 93), Lycurgus Bess (p. 97), Charles A. Bruslé (p. 51), Charles Commager (pp. 99, 100), Giles Hunter (p. 100), A. J. Ennis (p. 90).

The contestee adduces the testimony of Craig (Record, p. 272), Carriell

(p. 196), Wilson (p. 266), Coleman (p. 255), Frank Deslonde, (p. 205), Davidson (p. 250), Piernas (p. 261), and Verrett (p. 209), to show that, though given out, these tickets were not voted, simply because these witnesses allege they did not discover them in the boxes during the original count of the votes on the day of the election. The witness Davidson alleges he destroyed 1,000 bearing Acklen's name, which were given to him for distribution. The manner of the count at the different polls, however, in the opinion of this committee, entirely precludes any definite testimony as to examinations of tickets bearing contestant's name; and the weight of the testimony conclusively shows that these tickets were not only distributed to the voters, but voted, and that the commissioners of election, either unaware of the fact that such tickets were in the boxes, as they generally so testify, or willfully, by counting them in bulk and simply from the *headings*, credited the contestee with a large number of these votes that bore the name of the contestant.

As the change in this parish by a recount was a large one, this committee, in a careful and thorough investigation of all the facts connected therewith, have deemed it best to take up and treat each poll and all the evidence on both sides connected therewith separately, not only as to the distribution of these Acklen and blank tickets, the manner of the count of the votes, but also as to the identification of the box by one or more of the commissioners who signed and delivered it to the clerk. An examination of the recount, as compared with that made by the commissioners of election, shows the changes at polls 1, 2, 3, 4, 5, 6, and 7 to be material, and all in favor of contestant, with the exception of poll 3, where there is a gain of 17 votes for contestee. The other polls show but slight changes, there being at poll 9, however, where the contestant was originally credited by the commissioners of election with 121 Republican votes, by reason of the Democratic commissioner having been secretly apprised of the fact that Acklen's name would appear upon the Republican ticket, one vote is found among these for contestee. At no other poll does it appear that the Democratic commissioner was aware of such a fact; on the contrary, each and all testify that they were unaware of the existence of these tickets bearing Acklen's name until after the election, and failed to examine any of them, with that name in view, during the count.

At poll 1, it appears from the testimony of contestee's witness, J. S. Davidson (Record, p. 250), that he gave to Verrett, an officer at this poll, two packages, of 500 tickets each, one containing solely the tickets blank as to member of Congress, and the other, Acklen and Darrall tickets mixed together. It further appears that this officer, Verrett (Record, p. 260), who is also contestee's witness, testifies that he "gave them to several gentlemen around there, and they distributed them, and I distributed some of them myself, inside of the room where the poll was." Rev. James H. Tate, Republican (Record, p. 57), likewise testifies that he saw them circulating around, and that they were being given out to the voters, and also that he himself voted one.

It further appears from the testimony of Amadée Roth, commissioner (Record, p. 56), that the tickets were not scrutinized, but counted as straight Republican or straight Democratic. He says:

I just headed the tickets, and when I saw it was a straight Republican ticket I put it down, and when it was a straight Democratic ticket I put it down.

This is corroborated by other testimony at that poll.

But the contestee claims that at the recount the paper covering the box appeared fractured or torn, and although the clerk alleged that this had occurred through his carelessness in moving the boxes from one

part of the room to another, yet this committee, with a strict regard to the interests of both parties, and particularly those of contestee, on a recount, refuse to accept this box as recounted, but let it stand as originally returned in favor of contestee.

ROLL 2—BAYOU GOULA.

SUPERVISOR'S RETURN.		RECOUNT.				
		Dem.	Rep.	Total.	Blanks.	
Acklen	115	Acklen	114	226	340	90
Darrall	394	Darrell	—	86	86	
Packard	394					
Nicholls	115					

J. L. Davidson, colored Republican, and witness for contestee, alleges (Record, p. 248) that he received from Wharton 2,500 tickets the night before the election, and that 1,000 bore the name of Acklen. He alleges that he and Whittecoe examined and separated the Acklen tickets that night at his room; that he retained these Acklen tickets at his own room, while Whittecoe took the box and *all* the *other* tickets to his own room, some distance away. This latter fact is corroborated by Whittecoe, another of contestee's witnesses, who says (Record, p. 275) that they "selected them (the Acklen tickets) all out and left them at Davidson's house." He also says that he was at the poll at half past five o'clock next morning, with these tickets for distribution. But Davidson alleges that he distributed the tickets. Unless Davidson did, as this committee are led to believe, distribute these Acklen tickets, then here is a conflict of testimony on this point; but he admits (same page), on being asked as to their being at his poll:

I seen just an hour by sun, or perhaps later—I seen some of them, but not more than five; I think it was about two, lying inside of the room—inside, back of the poll; how they came there, I don't know.

This clearly indicates their presence at the poll; but he further says, p. 250, that he sent to Wharton for 500 more by a man named Joe Hardie, and he received from him the 500 sent for, all of which were blank as to member of Congress. From the testimony of W. W. Wharton, Davidson was in the movement to distribute these Acklen and blank tickets, and from his own admissions he played a double part; either he deceived Wharton or Whittecoe, and as Whittecoe is a very ignorant negro and testifies he can barely read and cannot write, it most probably was this latter.

But the distribution of these tickets at this poll is proved beyond question by the testimony of P. G. Deslonde, contestee's witness (Record, pp. 42 and 43):

Q. Did you receive any tickets from Mr. Wharton yourself?—A. I did.

Q. Were those tickets you distributed the black-back tickets?—A. Yes, sir.

Q. All of them?—A. Yes, sir. I gave a bunch of them each to some of my friends. I took them to be Republican tickets, because they were headed Republican tickets.

Q. Were they alike in every respect, with the exception of the names you have mentioned?—A. Yes, sir. In the morning I took all these tickets to be Republican tickets. During the day I discovered the name of Mr. Acklen upon the tickets and that some were blank. Therefore I discovered that there were three tickets.

This is corroborated by Wharton, who says he gave these tickets to Deslonde; and, further, this same witness again establishes their circulation at this poll by saying, in answer to the question (Record, p. 43):

Q. In visiting the various polls of the parish on the day of the election, did you see the Republican ticket with Mr. Acklen's name on it at more than one poll?—A. No, sir; I saw them when I came back about three o'clock at Bayou Goula poll.

Thus, the question as to their circulation here is deemed by this committee to be conclusively settled.

The only parties testifying to having been present or possessing any knowledge of the manner of the count of the votes at this poll, are —

William A. Smith (Record, page 54); J. S. Davidson (Record, pages 39 and 23); Bazile Craig (Record, page 274); and William Whittecoe (Record, page 275). This latter testifies that he was only present part of the time, and as he knows very little of the count, his testimony will not be considered.

William A. Smith, Democratic commissioner, poll 2 (p. 54, Record), says:

Q. Describe the manner in which the votes were counted.—A. The box was opened and the tickets were taken out, and the Democratic tickets were strung on a string, and the Republican tickets were strung on a string, and the scratched tickets also, and then they were taken and called off of each string.

Q. In the way in which you counted the tickets at that poll could J. H. Acklen's name have been on any of them without your seeing it?—A. Yes, sir.

Q. You say you did not scrutinize the votes?—A. No, sir; I never looked at them.

J. S. Davidson, Republican commissioner, poll 2 (pp. 39 and 23, Record), says:

Q. How were the tickets at that poll counted after the election? Were they counted as straight Republican tickets, and so on? Were they sorted off and counted in that way, or were they read by name through each ticket?—A. They were not read name by name. They were taken out by one commissioner and counted as a straight Republican ticket, or straight Democratic ticket, or scratched tickets. They were put off in three different piles.

Q. How many tickets were put on the string before the counting began?—A. They strung them all and they counted them afterward.

Bazill Craig, Republican commissioner, poll 2 (p. 274, Record), says (Darrall's witness):

Q. After you put them on the string, who counted them?—A. Robert Hebert kept one tally-sheet, and Mr. William Smith kept the other; and I took the tickets out of the box, and so did he, and we strung the tickets. All the straight Republican tickets went on a string, and all the straight Democratic tickets was put on a string, and all those that was scratched was put to themselves; and in taking out the tickets we examined to see which was the straight Republican; and we read them and found that all those were Republican, and they were put down in that way, and the straight Democratic tickets all put down the same way; and, after putting them on a string, we then counted them.

Q. Now, Mr. Craig, how did you string these tickets? Did you use a needle and a string?—A. Yes, sir.

Q. Where did you pass the needle; through the center?—A. It was done in such a manner that I cannot say whether they were all through the center or not. We picked them up, and put them sufficiently, some half-way, some perhaps not exactly; but we put them as near the center as we could, to my recollection.

Q. Then, in stringing the tickets, you strung them all on a string by passing the needle as near the center as you could?—A. Yes, sir.

Q. Now, Mr. Craig, if you were to string several hundred of these tickets through the center, in the manner you have described, on a string, do you think you could easily see the center of the ticket without a great deal of trouble in examining it?—A. No, sir; we could not.

Q. And they were counted on the string?—A. Counted on the string, sir.

The committee have observed that the Congressman's name appears just about the center of this black-back ticket, and as there were 375 of them strung on a string by the needle used being passed through the center of the ticket before they were counted at this poll—and all the testimony goes to show that they were counted *after they were strung*—it is easily understood how such a mistake as shown by the recount could have occurred, for it would be impossible for any commissioner to see where the Congressman's name appeared after the tickets were on the string.

And again, among those present at the count and testifying, Davidson (Whitteece, who was not present but a short time, excepted) is the only commissioner or person aware of these tickets being there. He seems to have suggested the stringing, and therefore if his testimony about the 1,000 Acklen tickets be true, the question is, was this stringing of tickets not effected by him for some ulterior purpose?

P. G. Deslonde, who was not present at the count, but who conversed with Robert Hebert, who also counted the tickets at that poll, but whose testimony is not to be found in the record, says (Record, p. 43):

Q. Did you not ascertain that those tickets were generally counted in bulk?—A. Yes, sir; that was the remark in the parish; that they were counted as straight tickets.

Q. After the election, was it found that they had been voted at any poll in the parish?—A. Yes, sir; only in the ward—in Grosue Tete.

Q. Had they been voted at any other poll in the parish, so far as you heard?—A. No, sir; by hearsay. Mr. Hebert told me that there might be about five tickets was voted there.

Q. Where?—A. Bayou Goula, poll No. 2.

Q. Was it not a matter of public notoriety in the parish after the election that many of those tickets bearing the name of J. H. Acklen on them and many of the blank tickets were voted?—A. Yes, sir; I heard some of the commissioners of election mention that; among them Mr. Robert Hebert. I asked him how the poll was down at Bayou Goula, and he stated to me that he thought there was some considerable scratching done there.

Q. Do you mean by scratching the voting of those tickets with my name on them?—A. He alluded to the Congressman at that time. I asked him if Darrall had received a solid vote down there. He stated to me that there was some scratching done.

Q. Do you mean the voting of the blank tickets?—A. I think that was the understanding of Mr. Hebert.

Q. That was your understanding of it?—A. Yes, sir; that was my construction of it.

Q. Not that the Republican tickets had the name of Dr. Darrall scratched off in ink or pencil?—A. No, sir.

Now, if this witness is to be credited, here was one of the commissioners who knew that such tickets for Acklen or blanks for Darrall were in the box, but who fails to count them for Acklen or deduct them from the vote for Darrall; for this committee find that Acklen and Darrall are credited with their *full party* vote by these commissioners' returns. (See returns.) Thus, if this witness Deslonde, who is contestee's witness (Record, p. 201), tells the truth, there was collusion between Hebert and Davidson not to count for contestant those votes cast for him in Republican tickets. Thus the entire evidence leads this committee to the conclusion that either through accident or design the tickets bearing contestant's name in the box of this poll were not counted for him.

These tickets were found on the recount in apparently the same condition in which they had been put in the box after the count of the votes by the commissioners, viz, strung together and tied up.

C. H. Gordon (Record, p. 111) says:

Q. Do you remember one box in which all the tickets were all strung on a string?—A. Yes, sir; that was the box from the first ward, and the tickets were all strung through the middle.

Q. That was the box from poll number 2 at Bayou Goula?—A. Yes, sir.

Q. Did not that string of tickets have the appearance of being in the box, just as they had been placed there by the commissioners?—A. Yes, sir; the same natural appearance. In fact, I met Mr. Davidson down in the city, and I asked him about it, and I told him the impression that had been brought to bear that those tickets had been tampered with, and I asked him, "How did you count your tickets in your boxes?" He said, "We just strung them together on a string and counted them one by one, just as you would count money."

This is corroborated by C. W. Colton (Record, p. 115) and G. H. Harrison (Record, p. 119). The box at this poll was sealed with a band of

paper that was first put on with mucilage and then sealed with wax.

Bazile Craig, contestee's witness, says (Record, p. 274) :

Q. Did you assist in sealing the box at that poll, Mr. Craig?—A. Yes, sir.

Q. Over the key-hole?—A. Yes, sir; and then we took the candle, with some red sealing-wax, and melted it sufficiently and covered the paper around the edges with the wax entirely.

Q. Did Mr. Smith have anything to do with sealing the box, as you recollect?—A. Mr. Smith was right there and helped to do, for one had the candle and the other had the wax.

Q. In the way that box was sealed up, could it have been opened without the seals that you put on or the paper that you put over have been broken?—A. No, sir.

W. A. Smith, commissioner at poll 2 (Record, p. 54), says :

Q. Was the box sealed?—A. Yes, sir.

Q. What did you do with the box?—A. Brought it here and delivered it.

Q. Was the box safely in your possession and sight until you delivered it to the clerk?—A. Yes, sir.

(The box referred to by the witness was here produced by the clerk of the court for identification.)

Q. Is that the box as you delivered it to the clerk?—A. I think that is the box yes, sir.

The fact that the box was intact at the time of being reopened for the recount is further shown in the testimony of G. H. Harrison, G. W. Colton, and J. H. Shanks, aside from the testimony of James Crowel and C. H. Gordon, is corroborative of the fact. The committee unhesitatingly decide that the vote of this poll should stand as recounted.

POLL 4—WHARTON UNION SCHOOL.

SUPERVISOR'S RETURN.

Acklen.....	33
Darrall.....	128

RECOUNT.

	Dem.	Rep.	Total.	Blanks.
Acklen.....	32	2	34	21
Darrall.....	—	105	105	
Packard.....				128
Nicholls.....				33

These Acklen and blank tickets were distributed here by C. H. Gordon (p. 108), and also by Senator Wharton.

The count of the votes was made in bulk, as appears from the testimony of N. L. Bruce, Democratic commissioner for poll 4 (Record, p. 47), who says :

Q. Describe the manner in which the votes at that poll were counted.—A. We first selected out the straight tickets, both Democratic and Republican, and would glance at them or glance through them, and then take them down as so many straight tickets. I would take down, for instance, and mark the tallies to a certain number of the Republican tickets all through, and then I would take the other ticket and mark that down in the like manner. As for scratched tickets, we generally read them through.

Q. In the way you counted those votes could the name of J. H. Acklen have been on some of them without you seeing it?—A. Well, yes, sir; on account of the tickets looking so much alike. I noticed that gentleman up there (referring to Mr. Gordon, the clerk of the court) laughing when we were reading some of them over as straight tickets.

J. H. Shanks, United States supervisor at poll 4 (Record, p. 49), says :

Q. Did you see the votes counted?—A. I did.

Q. How were they counted?—A. By separating the Democratic and Republican and scratched tickets. Mr. Verbois took them out of the box and Mr. Holmes overlooked them, and they were separated and counted that way. While they were be-

ing counted my friend Mr. Gordon was there, and I saw him laughing and smiling and I could not tell what he was laughing at, but I found out afterwards.

L. M. Verbois, commissioner at poll 4 (Record, p. 102), says:

Question. Were you present at the count?—Answer. I counted them myself, sir.

Q. Please describe the way in which the tickets were counted at that poll.—A. We first commenced calling the names, and we counted a few votes that way, calling all the names off. Then we divided them, and put all the Democratic tickets that had no scratch on them in one pile and the Republican tickets on one pile, after examining them to see if there was any scratching on them. Mr. Sandidge and I examined them. I believe he stood over my shoulder. Then I took up the piles and counted them, one, two, three, and so on, until the quantity in the pile was counted; and I would say to those who were marking to mark so many Republican tickets or so many Democratic tickets, and then I would fold them up and put them in the box.

Q. In the way in which those tickets were counted, could the name of J. H. Acklen have been on some of them without your seeing it?—A. Yes, sir; because I held them in my fingers and counted them as you would generally count bank-notes, one over the other.

C. H. Gordon, United States marshal at poll 4 (Record, p. 108), says:

Q. Will you describe the way in which those votes were counted?—A. Well, precisely at 6 o'clock the ballot-boxes were opened and the commissioners made arrangements to commence to count and tally. The tickets were laid out separately. The regular Republican tickets, or the Wharton tickets, that were not scratched, were laid off in piles of thirties, and the Wakefield tickets that were not scratched were laid off to themselves. They were all counted by thirties.

Q. In the way in which those tickets were counted was it an easy matter for the name of J. H. Acklen to have been on many of them without the commissioners being aware of that fact?—A. Yes, sir; it was a very easy matter. I could not help from laughing at the time at the way they were counting them. The two Democratic commissioners appeared to be very close, and there was one Republican commissioner, and they scrutinized the tickets pretty closely and were counting them as straight; and I was laughing at them counting them as straight tickets when some of them were blank and some of them had Mr. Acklen's name on them. They were counting them as straight for Mr. Darrall.

On page 60 he says:

Q. One of the witnesses testified to your laughing at the time of counting of the votes; what was the reason of that?—A. I was laughing at this: Mr. Bruce was put on as one of the Democratic commissioners and Mr. Verbois, with the understanding that they were to watch the votes very closely and see that the Democratic party got every vote, and when I saw them counting them at night, the way they counted them was that they laid the Republican tickets in a bunch together and just looked at the heads of them to see that they were Republican and were not scratched, and they would lay them aside, and the Democratic tickets in the same way, and then they counted them off by thirties; and what made me laugh was that they counted them all straight for Darrall when some of them had Acklen's name on them and some did not have any one's name on them.

Geo. Holmes, Republican commissioner at poll 4 (Record, p. 46), says:

Q. After you finished the count, what did you do with the tickets?—A. They were put in the box, and the box was sealed up.

Q. What did you do with the box?—A. Brought it to the clerk.

Q. Was the box in your possession until you delivered it to the clerk?—A. Yes, sir. (The box referred to by the witness was here brought in by the clerk of the court for identification.)

Q. Is that the box?—A. Yes, sir, that is the box?

Q. Is that the way you delivered it to the clerk?—A. Yes, sir.

N. L. Bruce, commissioner at poll 4 (Record, p. 48), says:

Q. Was the box safely in your possession until you delivered it to the clerk of the court according to law?—A. Well, we put it in the ante-room there, and had keepers watching it.

(The box referred to by the witness was here brought in by the clerk for identification.)

Q. Is that the box, and is it sealed up as you delivered it?—A. It looks to me like it, and there is my writing on it.

L. M. Verbois, commissioner at poll 4 (Record, pp. 52 and 102), says :

Q. After you finished the count, what did you do with the tickets ?—A. We put them back in the box.

Q. What did you do with the box ?—A. We brought the box and delivered it to Deslonde, the registrar.

Q. Was the box in your possession until it was delivered ?—A. Yes, sir; we sealed the box.

(The box referred to was here produced by the clerk for identification.)

Q. Is that the box ?—A. Yes, sir; that is the one.

Q. Is it as you delivered it ?—A. Yes, sir.

Q. Were you present when the box was sealed, Mr. Verbois ?—A. I sealed it myself, sir.

Again (p. 102):

Q. You were present and examined the box previous to the recount, and testified that it had not been opened or tampered with ?—A. Yes, sir.

Q. Are you willing to swear to that fact, beyond all question ?—A. Yes, sir; I examined it closely in the presence of the gentlemen that were there, and I could not see anything that was out of the way. I had a particuiar key in my pocket that day, and in putting the seal upon it I put the key on the sealing-wax, and when the box was brought to me some few days ago, or about a month ago, I examined to see whether I could not see that print, and I saw it the same as it was before.

Q. Then was it possible for any one to have opened or to have tampered with that box without your knowing that fact ?—A. No, sir. I will give my reason for it. I was very careful in sealing the box to put three seals on top and to put four on the side. That was right under the hole, so that if they wanted to put anything in the hole they would have to break the seal. The paper was very wide. At the lock of it there was also five seals, two on top and three at the bottom. The two on top were above the lock and the three at the bottom were below, and they could not get the lock open without tearing the paper. The paper was fully six inches wide. What made me particular was, that I had heard so much talk about stuffing ballot-boxes, and I thought I would give them some trouble to stuff that box, if they did do it. That was my view in doing it.

The contestee introduces but one witness at this poll, viz, F. V. Deslonde (Record, p. 204):

Q. You state further that you did not know that Mr. Wharton was opposed to Mr. Darrall, either before or since the election ?—A. No, sir; neither before nor since.

Q. Would Mr. Wharton have been likely to have informed you of any opposition to Dr. Darrall, knowing you to be a friend of Dr. Darrall's ?—A. That I don't know. He never said nothing to me. I know that on the day of election he was at Grosse Tete.

The very limited knowledge possessed by this witness, who is a colored man, is shown in the testimony just quoted. Wharton, it appears from the testimony of others, was in Plaquemine.

The fact of the count of the votes in bulk, when there were evidently Acklen and blank tickets among the others, is clearly shown by the testimony cited; and the identification of the box by the commissioners is complete and perfect. The committee decide that this poll shall stand as recounted.

POLL 5—DEBLIEUX PLANTATION.

SUPERVISOR'S RETURNS.

Acklen	63
Darrall	207

RECOUNT.

	Dem.	Rep.	Total	Blanks.
Acklen	63	95	158	32
Darrall	—	79	79	—
Packard				207
Nicholls				63
Antoine				207
Wiltz				63

The distribution of tickets.

Fred. Robertson, Republican, at poll 5 (p. 103, Record), says:

Q. Mr. Robertson, did you, previous to or on the day of the election, see any Wharton black-back Republican tickets with the name of J. H. Acklen on them for Congressman or with the Congressman's name left off?—A. Yes, sir; I distributed some of those tickets.

Cross-examination :

Q. Do you know of your own personal knowledge whether or not any of the Republican tickets, having the name of Mr. Acklen on them for Congress, were voted at that poll? I do not speak of what you have heard.—A. Yes, sir; I have that impression.

Q. I do not want your impression, but what you know of your own personal knowledge.—A. I know that some of them were voted; those that I gave out were voted.

James Preston also distributed tickets for this place. See testimony of Wharton.

The count of the votes.

E. B. Talbot, attorney at law, Democratic commissioner at poll 5 (p. 46, Record), says:

Q. Did you count or assist in counting the votes at that poll?—A. Yes, sir; I did; I counted them.

Q. Describe the manner in which the votes at that poll were counted.—A. Well, the straight Republican tickets and the straight Democratic tickets and the scratched tickets were each placed separately in piles, and the aggregate number of each was put down on the tally-sheet.

Cross-examination :

Q. When you counted the tickets did you pass them to anybody else?—A. In counting the tickets I was assisted in taking them out of the box and separating them by Coleman, a commissioner and a Republican.

Q. When you called out the votes the talliesmen, as you called them, marked them down?—A. Yes, sir.

Q. You did the calling?—A. Yes, sir; and the separating, assisted by this man Coleman. One of the United States commissioners made out one of the tally-sheets, and one of the commissioners made out the other. This man Coleman could not write.

Ernest Gourrier, at poll 5, (p. 87, Record), says:

Q. Will you describe the manner and way in which the votes at that poll were counted?—A. The commissioners assorted them out by general appearance, and took a cursory glance at them, and if there was no scratching on them they were all piled up as straight tickets, and the tickets that were scratched were put aside and were then counted over. The scratched names were noticed, and the balance of the ticket was counted just as it was supposed to be; that is, a straight ticket. Well, I did not think that the voting amounted to anything; that it was all with the returning-board, and we did not care what became of it. Then, afterward, somebody remarked that the tally-sheets did not amount to anything, and we threw them aside, and one of the commissioners just made out a statement or the return from memory as to how the vote had been counted out.

Q. State the name of that commissioner.—A. Mr. Talbot.

Q. Mr. Gourrier, is it not a fact that Mr. Talbot took the tickets out of the box and glanced at them to see whether they were scratched or not, and then placed them in piles; and that Jacob Coleman, another commissioner, had nothing to do with the votes, unless it was toward the last, when he assorted a few of them?—A. I believe he helped to spread them around or assort them out. I do not know that he did much.

Q. Did Jacob Coleman examine the tickets and read the names on them?—A. No, sir. I am free to say that he did not read a ticket through. He just assorted them out. He could barely read, anyhow, as it was.

Q. Is Jacob Coleman not an ordinary plantation field-hand?—A. He is an ordinary field-hand. I never saw him anywhere else. I never saw him anywhere scarcely before that day.

Q. In the way in which those tickets were counted, Mr. Gourrier, was it not very easy for the name of J. H. Acklen to have been on a number of them without any of the commissioners seeing it?—A. Yes, sir; easy enough. They only took a cursory

glance at the tickets to see if there were any erasures, and where there was an erasure that ticket was scrutinized as to the erasure.

Cross-examination:

Q. Then, if I understand you, Mr. Gourrier, the returns were made up without using any tally-sheets?—A. Yes, sir.

Q. From the vote as actually cast?—A. From the vote as counted and remembered by Mr. Talbot.

Q. All of the commissioners, including yourself, were satisfied with the return?—A. Yes, sir. For my part I knew that it did not amount to anything; that the returning-board would fix it up to suit themselves, and that it was no use to vote at all.

Jacob Coleman, Republican, at poll 5 (p. 257, Record), says (Darrall's witness):

Q. Now, Mr. Coleman, will you please describe exactly how this count was made, as you did not previously describe it carefully—the count of the tickets?—A. The way them tickets was counted, I unlocked the box; then I taken—myself and Parker—taken the tickets out, and laying them all out straight on the barrel, the straight Republican tickets all to themselves, and the straight Democratic tickets all to themselves, in separate piles; then we taken the straight Republican tickets, wrote each name down on the ticket carefully as we could, and each name was given his complement of votes, his number of votes; the names was taken down as they were on the ticket, and were written down; and the Democratic tickets the same way; and the scratched tickets was counted, and those that were not scratched; the name was taken down straight on the ticket, the names written, and the complement of votes written down.

James H. Parker, Republican, poll 5 (p. 260, Record), says (Darrall's witness):

Q. Did Mr. Talbert arrange the tickets in piles on the barrel?—A. Mr. Talbert arranged them.

Q. How many piles?—A. In three piles.

Q. Were the straight Republican tickets placed in one pile, and the straight Democratic tickets in another, and the scratched tickets in another?—A. Yes, sir.

Q. Did Mr. Talbert then call off so many straight Republican tickets?—A. Yes, sir.

Q. Did he then call off so many straight Democratic tickets?—A. Yes, sir.

Q. Did Mr. Talbert make out the statement himself of all the votes of the poll?—A. Yes, sir.

Let it be remembered that the box of this poll was sent to the clerk's office about one and a half or two hours after the poll closed. There were over 300 ballots, 49 names on each, to be counted in this time; this fully proves the count in bulk.

The identification of the box.

E. B. Talbert, commissioner at poll 5 (p. 47, Record), says:

Q. What did you do with the box?—A. We gave it in charge of one of the commissioners, who brought it to the court-house. I subsequently examined the box and found it in the condition that I had sent it over in.

(The box was here produced by the clerk of the court for identification.)

Q. Please examine that box and see if it is in the same condition in which you delivered it to the clerk.—A. Yes, sir; I believe it is.

Jacob Coleman, poll 5 (p. 47, Record), says (Darrall's witness):

Q. After you had finished the count what did you do with the tickets?—A. We put them in the box and sealed it.

Q. What did you do with the box?—A. Brought it here and delivered it to the clerk of the court.

Q. You had it until you delivered it to the clerk?—A. Yes, sir; I did.

(The clerk produced the box referred to for identification.)

Q. Is that the box?—A. Yes, sir; I put that wax on it myself.

Q. It is as you delivered it?—A. Yes, sir.

George Butterick, poll 5 (p. 239, Record), says (Darrall's witness):

Q. In what manner did you seal the box, or did you seal it at all after the tickets

were returned to the box?—A. I saw that the box was sealed; it was sealed by Mr. Gourrier, the democrat; it was certainly done in the ordinary way, or I should have noticed it.

Q. Was it sealed with sealing-wax or with mucilage?—A. With sealing-wax.

Q. Was the key-hole sealed up; or have you any recollection of that fact?—A. I have no recollection of it; but had it not been sealed I should have been apt to remember it. I should not probably have allowed it to go to the court-house unless I seen it was properly sealed.

Mr. Darrall introduces the following witnesses at poll 5, in rebuttal:

Geo. Buttrick states there were no Acklen or blank tickets either voted or distributed at that poll; but on cross-examination (page 239, Record) says:

Q. You testified that there were no tickets distributed at that poll?—A. I testified to the best of my knowledge.

Q. What is your knowledge on that subject, when you were in the house all day with the exception of once?—A. Not very good.

Q. I understand you to have stated that these tickets were taken out of the box by Coleman; and they were handed to Talbert and scrutinized by him, and that you and Mr. Guerrière laid off and made up the tally-sheets?—A. Yes, sir.

Q. Under the circumstances could you have seen every name on every ticket that was scrutinized by Mr. Talbert?—A. Certainly I did not see any of them.

Jacob Coleman states there were no blanks or Acklen tickets distributed at that poll, as he was about the poll all day; but on cross-examination (Record, p. 256) says:

Q. Mr. Coleman, how many polls were you at on the day of election?—A. Only one, sir.

Q. Were you in the room all day as commissioner?—A. I was in the room all day, as near as I can come at it, except about fifteen minutes. I asked for leave to get permission to go and get dinner.

Q. Did you get out at any other time except to get your dinner?—A. No, sir.

Q. Where did you get your dinner?—A. At Mr. Talbert's house, about two acres from the poll.

Q. You were gone, then, about fifteen minutes from the poll?—A. As near as I recollect. It might have been a little longer.

Q. As you were in the room all day, except fifteen minutes, which time you took to go a distance of a hundred and forty yards and to get your dinner and return, how is it that you know there were no Republican tickets distributed among the voters at the poll?—A. My reason is this: because I had a good many of the tickets in there, and whenever there was a different ticket came in I knew it. I had a good many in there in the room, up behind the box. When some one came up who didn't have a ticket, I gave them one. We closely examined them, and whensomever there was a ticket, except it was a straight Republican ticket, we knew it. I knew it anyhow.

Q. Do you mean to say that you knew the difference between the Republican tickets with Mr. Acklen's name on them and with Dr. Darrall's name on them as they were being voted in the box?—A. No, sir; I did not exactly mean that. It is just the same as I taken up this piece of paper and that piece of paper, and I see the difference in this piece of paper and this one. When this one comes in I know the difference—this one and that one, because I examined the two. [Witness illustrates with two pieces of paper.]

Q. Did you examine the tickets as they were voted?—A. No, sir; but I examined the same kind.

Q. Did you examine the tickets in the hands of the voters?—A. No, sir.

Q. Did you examine the tickets they voted?—A. No, sir.

James H. Parker states that there were no blanks or Acklen's tickets distributed at poll 5, and, therefore, none voted; but on cross-examination (Record, p. 259) says:

Q. Where were you on the day of election?—A. I was right there when they was voting at the polls.

Q. In the house all day?—A. Until twelve o'clock; then I went out.

Q. How long did you stay out?—A. About five minutes.

Q. Did you then return and remain in the house all day?—A. Yes, sir.

Q. Did you know whether any Republican tickets bearing the name of Acklen were circulated among the voters outside?—A. No, sir; I did not see any.

Q. Did you go among the voters on the day of election?—A. Before the poll was opened I did.

Q. Had there been Republican tickets with Acklen's name on them circulated among the voters would you have been able to see after the polls were opened?—A. No, sir; I would not be able to see them.

The foregoing testimony fully proves the distribution and voting of these Acklen and blank tickets at this poll. The count of the votes in bulk is likewise shown in the testimony quoted. And that fact, in the opinion of this committee, is fully established when it is borne in mind that this box was sent in to the clerk of the court in less than one hour after the closing of the poll. When it is remembered that there were over three hundred ballots, containing over forty names each, to have been counted and tallied, and the returns made up, it would be absurd to suppose that the tickets were examined as to contestant's name, and that they must have been, as the witnesses allege, counted in bulk; nor does the testimony of the witnesses on behalf of contestee, also quoted, in any wise impinge the facts so clearly shown. These, together with the complete identification of the box, lead the committee to decide, without hesitation, that this poll should stand as recounted.

POLL 6—STINGLE'S STORE.

SUPERVISOR'S RETURN.				RECOUNT.			
				Dem.	Rep.	Total.	Blanks.
Acklen	156	Acklen	155	73	228		
Darrall	301	Darrall		99	99		135

The distribution of tickets.

A. J. Barnes, Republican (Record, p. 93), says:

I was United States supervisor at poll No. 6 in this parish, at Stingle's store.

Q. Mr. Barnes, who distributed the Republican tickets in your ward at the last election?—A. Giles Hunter, Lycurgus Bess, and Charles Commeger, and myself.

Q. Who received those tickets from Mr. Wharton?—A. Myself.

Q. Do you remember what kind of tickets Mr. Wharton delivered to you?—A. Yes, sir.

Q. State the kind.—A. They were black-back tickets.

Q. Were those tickets all of one kind as regards the names, or were there such tickets as are known as Acklen tickets, and blank tickets, and straight tickets?—A. Yes, sir; there were some with Mr. Acklen's name on them, and some with Mr. Darrall's name on them, and there was some blank tickets among them.

Q. You received those tickets yourself from Mr. Wharton?—A. Yes, sir.

Q. What did you do with them?—A. I took them over the river and gave them to Mr. Bess and Giles and Mr. Commeger. They were in town at the time, and I gave them a good many tickets on the road before we got home.

Q. Were those tickets distributed around among Mr. Wharton's friends on the morning of the election?—A. A great many of them were distributed over-night, and a great many of them were distributed next day; there were a great many distributed over-night.

Q. Did Mr. Wharton instruct you how to have those tickets distributed, and into whose hands to have them placed?—A. Yes, sir; he told me how to distribute them—to give them around to the boys to give out.

Cross-examination:

Q. Can you swear positively that any of the persons to whom you distributed these Republican tickets with Mr. Acklen's name on them voted them at the poll on that day?—A. Well, I can undoubtedly swear that some of the tickets that I distributed with Mr. Acklen's name on them did get voted there.

Q. You swear to that fact?—A. Yes, sir; I know that.

Q. How do you know it?—A. Because I know that some of the voters came right to the door where they were voting, and they came in with the green-back tickets, and they said they wanted the black-back tickets, and they took them and I saw them when they went in.

Q. Are you certain it was one of those tickets with Mr. Acklen's name on them?—A. Yes, sir; I had them in my hands.

Charles Commeger, Republican (Record, p. 99), says:

Q. Did you receive and distribute any black-back Wharton tickets with the name of J. H. Acklen on them for Congress or with the Congressman's name left off at the last election?—A. I could not tell whether the Congressman's name was left off, but I know one thing: that Mr. Acklen's name was on the ticket. I did not know the gentleman, but I knew it was Mr. Wharton's ticket, and we all wanted to vote for him in the seventh and fourth wards; and so we would have taken his tickets. The principal part of the fourth ward would have been destroyed in his name if he was on board the ship and she going to be sunk.

Q. From whom did you receive those tickets?—A. From Andrew J. Barnes.

Giles Hunter, Republican (Record, p. 100), says:

Q. Did you distribute any tickets on the day of election, Mr. Hunter?—A. I did, sir.

Q. What kind of tickets?—A. Mr. Wharton's tickets—the black tickets.

Q. Did any of those tickets that you have mentioned have the name of J. H. Acklen on them for Congress?—A. Yes, sir.

Q. How do you know that fact?—A. Because I saw it myself on the tickets.

Q. Did that make any difference in the distribution of the tickets?—A. No, sir; do not think it did.

Lycurguss Bess, Republican (Record, p. 97), says:

Q. Mr. Bess, did you receive and distribute any of the Wharton tickets on the day of the election with J. H. Acklen's name on them or with the Congressman's name left off?—A. I distributed some of the Wharton tickets, or black tickets, with J. H. Acklen's name on them, but who the men were that I gave them to I do not know. I did not know who Mr. Acklen was, but I understood he was Mr. Wharton's friend, and I was going to support all that were on the ticket with Mr. Wharton, even if it was a rattlesnake.

Q. Who gave you those tickets for distribution?—A. Mr. Andrew J. Barnes. I was up here on the day he got them, and they commenced distributing about 5 o'clock.

Chas. A. Brusle (Record, p. 51) says:

Q. State where you were at the election of November 7, 1876.—A. I was in ward No. 4, at poll No. 6. I was there during the day.

Q. What was the color of the straight Republican tickets in this parish?—A. They had a black back, I think.

Q. Did you, after the election, ascertain that some of those tickets had the name of J. H. Acklen printed on them?—A. During the day I did. I had no opportunities of seeing them afterward, because I was not at the polls when they were counting the votes; I went home before the count was made.

Q. Was it not the common talk and rumor in the parish that many of those tickets bore my name?—A. Yes, sir; it was the impression throughout the parish that a great many of them did. The fact is that it was supposed that you would carry a very large vote.

The count of the votes.

Felix Roth (Record, p. 55) says:

Q. You were a commissioner there?—A. Yes, sir.

Q. Did you count or assist in counting the votes there?—A. I did, sir.

Q. Describe the way in which the votes were counted.—A. The tickets were piled in three different lots.

Cross-examination:

Q. You certified the returns from that poll to be correct?—A. Yes, sir; and it was correct as far as I could do it, sir. The only thing I might have slipped was the name in this case. I had very little comfort and a great deal of difficulty. It was one of the coldest nights that I ever saw in my life and I had no fire. That was the only thing that might have happened; errors might have happened. I do not pretend to be correct in every case; I tried to do justice to both parties.

Thos. Johnson, at poll 6 (Record, p. 57), says:

Q. Did you arrange them in piles?—A. Yes, sir; the Republican tickets together.

We had two Republican tickets, the blue ticket and the black ticket, and then we had the straight Democratic ticket. We counted each together.

A. J. Barnes, United States supervisor at poll 6 (Record, p. 94), says:

Q. Explain how the votes were counted after the polls were closed.—A. They were taken out and laid on the table, and all the black tickets were called straight Republican tickets, except those that had scratches on them, which were laid off on one side. There were some white tickets that were scratched and there were some green tickets that were scratched, and they were all laid aside. Then we looked where the scratches were and it was fixed up.

Q. After those tickets had been glanced at to see whether they were scratched or not, and assorted out in piles, were they then counted by tens and twenties?—A. To my recollection they were counted ten and twenty in a pile.

Q. In the way in which those tickets were counted could the commissioners, who were looking to see whether they were scratched tickets or not, have easily overlooked the name of J. H. Acklen on them?—A. Without any doubt they could have overlooked a name, because a person who is not looking at any one name particularly, but just taking up the ticket to see if there was any scratch on it, would just see if there was any scratch, and then lay it down again.

Cross-examination:

Q. Were the votes first taken out of the box and carefully examined by some one of the commissioners, and then piled up, and afterward counted in bulk?—A. They were taken out by Thomas Johnson and laid out in piles.

Q. Is Thomas Johnson an intelligent man?—A. Well, he can read and write. He was a commissioner.

Q. Did the Democratic commissioner examine the tickets as they were taken out?—A. No, sir; I do not think he did. I think the only one who took them out after the box was opened was Thomas Johnson. They were taken out by Thomas Johnson and put in piles, and when they got so many in a pile they would mark them down. Mr. Gourrier was there, and Mr. Lorrison, and Mr. Bergeron.

The identification of the box.

E. J. Wilson (Record, p. 268 says) Darrall's witness):

Q. When the votes were placed back in the box how was the box sealed?—A. We put a sheet of paper right over the key-hole, and then we put the tape right below the key-hole, and then we sealed it and signed it.

Q. The way that paper was placed and sealed on the box, if the box had been unlocked and opened, would the paper have been broken?—A. Of course.

Q. Then it would have been impossible for that box to have been opened unless the paper was broken?—A. Unless the paper was broken.

Q. Would you have recognized that box, and could you have told whether that box had been tampered or interfered with by the appearance of that paper and the seals?—A. Yes, sir.

Q. You are certain of that?—A. Yes, sir.

A. J. Barnes (Record, p. 59) says:

(The box of poll number 6 was here produced by the clerk of the court for identification.)

Q. Is that the box from poll 6?—A. Yes, sir.

Q. Did you seal that box yourself?—A. Yes, sir; me and Mr. Roth.

Q. Is that the box just as you sealed it?—A. Yes, sir; it seems so.

Q. Examine it carefully, please.—A. It seems so.

Q. You sealed it yourself, did you?—A. Yes, sir; me and Mr. Roth and Mr. Johnson. Mr. Johnson held the candle for me, and I took the wax and dropped it on here with the candle.

Q. Has not Mr. Roth defective eyesight, or is he not near-sighted?—A. Well, I never heard him say anything about it.

Cross-examined by Mr. Jolley:

Q. Were you a commissioner?—A. I was a supervisor.

Q. How do you recognize the box?—A. Well, I know Johnson's signature and this other signature of Mr. Wilson very well.

Q. Could you swear to that signature and to that one?—A. Yes, sir.

Q. Could you swear to that other one?—A. Well, I have not seen his as often. This gentleman, Mr. Wilson, learned me; I went to school to him.

Q. You sealed that box yourself?—A. Yes, sir; me and Mr. Roth.

Q. You sealed the box?—A. Yes, sir; I do not know which one held the candle, but I and Thomas Johnson and all the rest were there, and when I sealed it I know I was very careful in sealing it up. Johnson was holding the candle and the wax.

Q. Did they put their names on the key-hole?—A. They put them there on top.

Q. Did Mr. Roth put his name on the key-hole?—A. He put his name somewhere; I did not notice whether he put it on the key-hole.

Q. How did you know that he put his name on the box?—A. Because I was standing right alongside of him; we were very careful about it; all of us were very careful.

Mr. Darrall introduces E. J. Wilson as a witness as to this poll, who states there were no blank or Acklen tickets at the poll; that none were distributed, none voted, and none in the box, as he examined each and every name on each and every ticket; but on cross-examination says (Record, pp. 266, 267, 268):

Q. Mr. Wilson, how many kinds of Republican tickets were voted at your poll?—A. Two.

Q. Describe them.—A. The blue ticket and the black ticket.

Q. Did you distribute any of the black-back tickets?—A. No, sir.

Q. In the house?—A. Right in the house, sitting down to the table.

Q. Were you there all day?—A. All day; never had a chance to go to get my dinner; had my dinner there.

Q. You did not go out at all?—A. No, sir.

Q. I understand you to say that you distributed the blue-tickets, and not the black tickets?—A. Yes, sir; I distributed the blue tickets, but not the black.

Q. Who assisted you in counting these votes?—A. Well, there was Mr. Roth and Thomas Johnson and myself.

Q. Did you keep any of the tally-sheets?—A. I kept the tally-sheets; yes, sir, all the time; and it was correct with the tickets that come out of the box.

Q. I mean, who kept the tally-sheet when you counted all the tickets at night?—A. I kept the tally-sheet.

Q. When the tickets were taken out of the box were they not arranged in separate piles?—A. Yes, sir.

Q. Then, when the number of Republican tickets were given to be tallied down, were they not called out in this way—so many straight Republican tickets, so many straight Democratic tickets; and then were not the scratched tickets taken out and read separately?—A. Yes, sir; separately, one by one.

Q. When the tally was made, was each straight Republican ticket taken up and read, every name off, or was the bundle counted through and then tallied?—A. We taken ten straight tickets out. I examined ten straight tickets one at a time, and, of course, we put them down; then we took that tally off, and then we would take ten more straight tickets, and we would put them down, and we continued that way until the box was through; and all the scratched tickets we called them one by one, namely by name.

Q. Now, you stated that you particularly examined these scratched tickets yourself?—A. Yes, sir.

Q. And are certain that Dr. Darrall was not scratched on any of them?—A. Yes, sir.

Q. Did Dr. Darrall get the full Republican vote at that poll?—A. Yes, sir.

Q. You are certain of that?—A. I am certain of that.

Q. If he had been scratched on three or four tickets would you have noticed it?—A. Yes, sir; because we called all the names off the scratched tickets; we called them out separately, one by one, every name on the ticket.

Q. You say that Dr. Darrall got the full Republican vote of that poll?—A. Yes, sir.

Q. Here is a certified copy of the consolidated vote of the parish of Iberville. What is the vote for Dr. Darrall at your poll on that paper? (Consolidated return presented to witness.)—A. Three hundred and one for Dr. Darrall.

Q. What is the vote for Governor Packard there?—A. Three hundred and eight.

Q. For C. C. Antoine?—A. Three hundred and eight.

Q. I understood you to say that Dr. Darrall received the full Republican vote at the poll?—A. Yes, sir.

Q. How do you account for the fact that he falls seven votes behind Governor Packard, according to the returns?—A. I could not tell anything about that.

Q. Has not Mr. Felix Roth got defective eyesight?—A. Yes, sir; can't see without spectacles at night.

Q. Examine those tickets Mr. Wilson. (Black-back tickets presented to the witness.) Did you discover any difference in them?—A. There is a difference in one of two of them.

Q. What is the difference?—A. I see your name in place of Darrall's.

Q. Is there any other difference?—A. No, sir.

Q. Was this black ticket the black-back ticket, as well as you remember, that was voted at your poll 6?—A. Yes, sir; I could tell you better if I had a pair of spectacles.

Q. Are you troubled with weak eyes?—A. Sometimes I am, and sometimes I can see pretty well.

Q. Did you have your own spectacles that night?—A. No, sir; I borrowed Mr. Felix Roth's.

Q. How did Mr. Felix Roth manage to see without his spectacles?—A. When I got through I passed them to him.

Q. How long did he lend you his spectacles?—A. For the time that I needed them.

Q. How long did you need them?—A. I did not need them more than twenty-five or thirty minutes at a time. Then when he needed them I would give them to him.

Q. What were you doing when he had the spectacles?—A. Well, I was counting out the votes, and so on.

Q. Did you handle all the tickets while Mr. Roth had the spectacles?—A. No, sir; I did not.

Q. Did Mr. Roth handle any of the tickets while you had the spectacles?—A. No, sir.

Q. You always use spectacles?—A. Not at all times; only when it troubles me.

Q. Would your eyes be likely to trouble you in examining carefully any small prints for five or six or seven or eight hours in succession?—A. But it sometimes don't; sometimes I could read all day and sometimes I could not.

Q. Do you think that you could read all day and read all night, too, without your eyes affecting you?—A. No, sir; I could not do that.

Q. What sort of light did you have in your room?—A. We had candles; some five or six.

Q. Where were the candles placed?—A. They were placed all around the box, so that we could have plenty of light to see.

Q. Was the night a cold and disagreeable night?—A. Yes, sir.

Q. Have fire in the room?—A. We did not have any fire. We had no place to make the fire. It had been a gin-house.

Q. The wind came in, then?—A. No, sir; there was no wind. It was perfectly closed, but we had no place to make the fire.

Q. Were you comfortable there?—A. We were tolerably comfortable, only our toes bothered us from the cold.

Q. You suffered a good deal from the cold?—A. Yes, sir; although there was no wind to get to us.

Q. Were you not all pretty anxious to get through the count?—A. Yes, sir; we were.

Thomas Johnson, colored, Republican commissioner at poll No. 6, says (Darrall's witness):

Q. Did you assist in counting the votes at your poll after the election?—A. Yes, sir.

Q. Did you examine any tickets yourself?—A. The tickets were counted in bulk, by tens and twenties.

Q. Who took the tickets out of the box?—A. I did.

Q. Did you look at them as you took them out of the box?—A. No, sir; just put all the Republican tickets to themselves and all the Democratic tickets to themselves.

There were two Republican tickets running; a blue ticket and a black Republican ticket. The Democratic ticket was a white ticket; one Republican ticket with a black back, and then the other was blue. We had taken the blue tickets and counted them

to themselves in bulk, and the black tickets likewise, and then the Democratic tickets the same; but, as counting out, one by one, we did not do it.

Q. Did you examine the face of any of the tickets yourself?—A. Only examined one. I had twenty in bulk, and one I just called the names from as I walked. I

just called off the names, so many and so many votes, from just the first one. I didn't take them all and examine them through; I didn't examine them all through.

Q. What did Mr. Wilson do? Did he examine tickets?—A. No, sir; he didn't examine them through, I don't believe.

Q. Did he examine the tickets at all?—A. Just stood there and took them away from me, as I counted them out in twenties.

Q. Did other officers examine the tickets?—A. No, sir; the Republicans were to themselves, and the Democrats likewise.

Q. You say you counted them in bulk; did you take them in bulk of tens of twenties?—A. In twenties.

Q. The straight tickets?—A. Yes, sir; and the scratched tickets we laid aside until we got through, then we counted them last. There were some names that were

scratched out; we couldn't count them in bulk with the others; we counted them to themselves.

Cross-examination:

Q. Then there could have been tickets with my name on them?—A. There could have been tickets with your name on them, but we counted them in bulk; we didn't examine them close; didn't have time to count them one by one.

Q. Did you see the box sealed?—A. Yes, sir; I saw it sealed.

Q. Was the box not sealed with a paper sealed on top, the place where the votes go in, then the paper carried over the side of the box and down over the key hole, and sealed there again?—A. Yes, sir; it was sealed where the tickets go in and sealed over the key-hole also.

Q. And the paper carried over the edge of the box?—A. Yes, sir.

Q. Then the box couldn't have been opened without breaking that paper or seals, could it?—A. No, sir; it could not have been opened except by breaking those papers off.

The committee find the proof of the distribution and voting of these Acklen and blanks at this poll complete, likewise the identification of the box as being intact, to have been beyond question. The proof as to the count of the votes in bulk is in no wise questioned save by the testimony of contestee's witness Wilson, which has been quoted at length, and this is rebutted by that of this other witness, Johnson, whose testimony is flatly contradictory of that of Wilson.

The committee are clearly of the opinion that this poll should stand as recounted.

At poll 7 the distribution of these Acklen and blank tickets is proven by Chrs. Commyer (Report, pp. 99 and 100). The votes are shown to have been counted in bulk by the testimony of Adonis Le Blanc, commissioner (Report, p. 58). Nor are the facts set forth sufficiently questioned or controverted in the testimony of the only witness the contestee produces at this poll, viz, J. M. Carville (Report, p. 197); but when the box previous to the recount was presented to the witness Le Blanc, he was not able to identify it, and although in the opinion of this committee its identity is sufficiently established by the testimony of C. H. Gordon and James Crowell, the present and former clerks, yet this committee, out of abundant caution, conclude, as the names of the commissioners were not written on the box, to let it stand as originally counted in favor of contestee, as it does not affect the result, although they would feel justified in accepting the recount at this poll.

CONCLUSIONS.

Your committee, reviewing the entire case, are led to the following conclusions:

First. They disregard the return of the vote made by the Wells-Anderson returning-board because of the most flagrant fraud, and of the exercise of judicial power by said board by arbitrarily for no other reason than to achieve a result in accordance with their will.

Second. They adopt the count of the votes as declared by the present legal board of canvassers in all the parishes except those of Saint Martin's, La Fourche, and Iberville. That board counted the vote actually cast, and returned it without the exercise of judicial powers and without disfranchising any portion of the people. It is composed of men of high character, Republicans and Democrats, and there is every reason to give full faith and credit to its official acts.

The committee adopt the returns of this board, as shown by the table here below quoted.

But the board of canvassers omitted from their count the vote of Saint Martin's, declaring the returns from that parish (Record, p. 13) to be forged. But there is no other proof of this fact, and the committee

adopt the current agreement of contestee and contestant (Record, p. 172) with regard to said parish, and therefore return it as follows:

	C. B. Darrall.	J. H. Acklen.
Saint Martin's	1,095	1,027

In the parish of La Fourche, the committee, in full accordance with the proof and the decree of the supreme court of Louisiana in the case of Welre v. Wilton (Record, p. 2), reject the vote of poll 17, where 86 votes were cast for contestee, and return said parish as follows:

	C. B. Darrall.	J. H. Acklen.
La Fourche	1,929	2,086

In the parish of Iberville the committee adopt there count of the votes at polls No. 2, 3, 4, 5, and 6, as per tabulated statement here below given, and return said parish as follows:

	C. B. Darrall.	J. H. Acklen.
Iberville Parish	1,423	1,468

Having thus considered these polls seriatim, the committee decide the following to be the proper and just vote for the parish of Iberville, viz:

Poll.	Acklen.	Darrall.
1.....	44	218
2.....	340	86
3.....	219	189
4.....	34	105
5.....	158	79
6.....	228	99
7.....	58	187
8.....	59	55
9.....	250	122
10.....	33	193
11.....	45	90
	1,468	1,423

Or a majority in this parish for the contestant of 45 votes. And in the entire district the committee decide that the following table shows the proper and just vote as cast in the different parishes for the contestant and contestee:

Names of parishes.	C. B. Darrall.	Joseph H. Acklen.
	Votes.	Votes.
Ascension	2,059	1,215
Assumption	1,692	1,679
Terre Bonne	1,966	1,398
Saint Mary	2,385	1,423
Iberia	1,455	1,242
La Fayette	661	1,157
Vermillion	228	955
Calcasieu	91	1,291
Cameron	69	225
La Fourche	1,929	2,086
Saint Martin's	1,095	1,027
Iberville	1,423	1,468
Total	15,053	15,161

Or a majority in the entire district for the contestant of 108 votes.

Your committee therefore recommend for passage by the House of Representatives the following resolutions :

Resolved, That Chester B. Darrall was not elected and is not entitled to a seat in the House of Representatives from the third Congressional district of Louisiana.

Resolved, That Joseph H. Acklen was elected and is entitled to a seat in the House of Representatives from the third Congressional district of Louisiana.

JOHN T. HARRIS.
WILLIAM M. SPRINGER.
MILTON A. CANDLER.
JAC. TURNEY.
THOS. R. COBB.
JERE. N. WILLIAMS.
E. JNO. ELLIS.

Mr. PRICE, from the Committee of Elections, submitted the following

VIEWS.

An examination of this case discloses the following facts :

The third Congressional district of Louisiana is composed of the parishes of Ascension, Assumption, Terre Bonne, Saint Mary, La Fayette, Vermillion, Calcasieu, Cameron, La Fourche, Saint Martin, and Iberville. On the 7th day of November, 1876, an election was held in this Congressional district for a member of the Forty-fifth Congress, and after the election, and after the votes at the polls at all the parishes had been counted by the legally-authorized officers, and the returns made as required by law, the following certificate of election was issued :

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
Third District of Louisiana, New Orleans, December 28, 1876.

Be it known that at an election begun and held on the 7th day of November, A. D. 1876, for members of Congress, Chester B. Darrall received 15,626 votes, and Joseph H. Acklen received 13,533 votes.

Now, therefore, I, William Pitt Kellogg, governor of the State of Louisiana, do hereby certify that Chester B. Darrall received a majority of the votes cast at said election, and is duly and lawfully elected to represent the third Congressional district of the State of Louisiana in the Forty-fifth Congress of the United States.

Given under my hand and the seal of the State this 28th day of December, A. D. 1876, and of the Independence of the United States the one hundred and first.

WM. P. KELLOGG.

By the governor:
[SEAL.] P. G. DESLONDE,
Secretary of State.

From which it appears that Chester B. Darrall was legally elected as a Representative to the Forty-fifth Congress from said third district of Louisiana.

Subsequent to this, and after the inauguration of the Nicholls government, a law was passed creating a new returning-board, and this new board, created under a new law, proceeded to a canvass of the same returns for the same office for the same district, and, after a full canvass, Governor Nicholls issued the following certificate of election

UNITED STATES OF AMERICA,
EXECUTIVE DEPARTMENT, STATE OF LOUISIANA-

This is to certify that at a general election, begun and held in the State of Louisiana

and in the third Congressional district of said State, on the 7th day of November, 1876, it being the first Tuesday after the first Monday in said month, and the day prescribed by the laws of the United States and the said State of Louisiana for the election of Representatives in Congress from the said State, C. B. Darrall and Joseph H. Acklen appear from the returns of said election, filed in the office of the secretary of state, within and for said State, to have been the only persons voted for in the third Congressional district of said State for Representative in the Forty-fifth Congress of the United States from said State; and that it further appears from said returns on file and of record in said office that C. B. Darrall 15,786 votes and Joseph H. Acklen received 14,692 votes for Representatives as aforesaid in said district; and that C. B. Darrall, having received a majority of the votes cast for Representative from the third district, in said State of Louisiana, in the Forty-fifth Congress of the United States of America at said election, has been duly, lawfully, and regularly elected to represent said third district of said State in the aforesaid Congress of the United States, in accordance with the laws of the United States, and of the State of Louisiana.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

We, Francis T. Nicholls, governor of the State of Louisiana, and Oscar Arroys, assistant secretary of state of said State, do hereby certify that the above and foregoing declaration of the result of the election begun and held in the third Congressional district of the State of Louisiana on the 7th day of November, 1876, is a true copy of the original certificate, as recorded in the office of the secretary of state of the State of Louisiana, by the secretary of state, and signed by the governor.

Witness our hands and the seal of the State of Louisiana, at the city of New Orleans, this 27th day of February, 1877.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

OSCAR ARROYS,
Assistant Secretary of State.

From which it appears that Chester B. Darrall, the same man for the same office, was elected.

By the Kellogg returning-board Darrall's majority is 2,093, and by the Nicholls returning-board it is 1,094.

The difference in majorities arises in this way: in making the returns on which the first certificate was given, the supervisors of registration had rejected polls in parishes as follows: Poll 4, Iberia Parish; polls 1 and 3, La Fayette Parish; polls 2 and 10, La Fourche Parish (remember that these were rejected by the parish officer and never came to the returning-board; and poll 2, in La Fayette Parish, was rejected by the returning-board. These polls being rejected, left the majority of contestee 2,093, as above.

But when the Democratic returning-board came to make up their returns, they included all of the polls rejected, and that gave contestee a majority of 1,094, as above stated. These Democratic returns were made from the copies of the original papers on file in the clerk's offices of the various parishes of the district, and are submitted by contestant as evidence. (See pp. 14, 15, 16, 17 of the Record.)

A new canvass of all the votes of all the polls in all the parishes having been made by a returning-board created by contestant's political friends, and the result being still against him, some other plan must be devised to accomplish his purpose, and, therefore, four months after the election, and two months after it is the duty of any person to protect and keep safely the ballot-boxes in which the votes cast at said election were deposited, the contestant procured a recount of the ballots then found in the boxes in the parish of Iberville, and upon this recount, and upon that alone, does he now base his claim for the seat. If the recount had been made within the time required by law that the ballots should be carefully preserved, and the boxes had been deposited and kept as the law required, some weight might be given to the recount, though McCrary on Elections, secs. 93, 96, 277, 279, is authority against

it. But neither of these conditions has been complied with, and consequently the recount is of no effect.

We quote:

McCrary on Elections, section 93:

A canvassing-board having once counted the votes, and declared the result according to law, has no power or authority to make a recount. When this duty is once fully performed, it is performed once and forever and cannot be repeated." (*Bowen vs. Hexon*, 45 Mo., 350; *Gooding vs. Wilson*, Forty-second Congress.)

In the former case the court say:

To suppose that it could be renewed, that the canvass of one day could be repeated the next, and counter-certificates be issued to different contestants as new light or influence was brought to bear upon the mind of the clerk, would render the whole proceeding a farce.

And in the latter case the report of the committee has this language:

On examination of the precedent it does not appear that this House favors the setting aside of official and formal counts made with all the safeguards required by law, on evidence only of subsequent informal and unofficial counts without such safeguards. No instance was cited at the hearing where the person entitled by the official count was deprived of his seat by a subsequent unofficial count. On principle, it would seem that if such a thing were, in the absence of fraud in the official count, in any case admissible, it should be permitted only when the ballot-boxes had been so kept as to be conclusive of the identity of the ballots, and when the subsequent count was made with safeguards equivalent to those provided by law. In the absence of either of these conditions, the proof, as mere matter of fact, and without regard to statutory rules, would be less reliable and therefore insufficient.

McCrary on Elections, section 96:

In *Kline vs. Myers* (1 Bartlett, 574) the House refused to order a recount of ballots upon the request of contestant. One reason was that the contestant did not offer evidence sufficient to show, even presumptively, that the original count was erroneous or fraudulent. But another reason was the great danger of attempting to set aside the official count by a reopening of the boxes and a recount of the ballots months after the election. And upon this latter point the committee, in their report, say: "To adopt a rule that the ballot-boxes should be opened upon the mere request of the defeated candidate would occasion more fraud than it could possibly expose. The number of ballot-boxes in each Congressional district is seldom less than fifty, and often more than two hundred. They are usually left in the care of a magistrate or some township officer, by whom they are deposited in no safer place than an upper shelf in a public office. The opportunities of tampering with the boxes thus scattered through the district would be abundant, and if it were known in advance that a second count could be had without discrediting the first the temptation to do so would be strong."

It should be remembered that the fact sought is not what the ballot-boxes contain six months or a year after the election, but what they did contain after the last vote was deposited on the day of election.

Certainly an impartial, accurate, and public count then by the sworn officers would be better evidence of that fact than any subsequent count, not more impartial, and not presuming to be more accurate than the first, and after the boxes had long been exposed to the tampering of dishonest partisans.

McCrary on Elections, section 277:

Where, as is the case in several of the States, the statute provides a mode of preserving the identical ballots cast at an election for the purpose of being used as evidence in case of contest, such statute, and particularly those provisions which provide for the safe-keeping of such ballots, must be followed with great care. The danger that, after the count is made (especially if the vote is very close), the ballots may be tampered with, is so great that no opportunity for such tampering can be permitted. Such ballots, in order to be received in evidence, must have remained in the custody of the proper officer of the law from the time of the original count until they are produced before the proper court or officer, and if it appear they have been handled by unauthorized persons, or that they have been left in an exposed or improper place, they cannot be offered to overcome the official count. See *Gooding vs. Wilson* (Forty-second Congress), *Butler vs. Lehman* (1 Bartlett, 354), *Kline vs. Verrill* (*ibid.*, 381).

In *Butler vs. Lehman* the House of Representatives, after a full discussion, sustained the minority of the committee in rejecting a recount upon the ground that the ballot-boxes had not been so kept as to rebut a reasonable presumption that they had been tampered with.

McCrary on Elections, section 279:

The case of *Archer vs. Allen* (1 Bartlett, 169) is another case in which there was a recount of the ballots after the official count had been made and the result announced. The official canvass showed the election of the incumbent by a majority of only one vote. The recount, which was made *four months* after the election, resulted in the alleged discovery of a mistake of two votes in favor of contestant, just sufficient to change the result. The necessity for proving affirmatively that the ballots had not been tampered with seems to have been felt and conceded by the contestant, and a good deal of testimony was taken upon that point, enough, according to the report of the majority of the committee, to make it clear that the ballots counted at the second and unofficial count were the identical ballots originally deposited in the box. The minority of the committee, however, took the opposite view and insisted that the proof of identity was insufficient.

After an elaborate debate in the House, the report of the majority, declaring the incumbent not duly elected, was adopted, but the resolution giving the seat to the contestant was lost, and the seat thereby became and was declared vacant.

CAREFULNESS OF THE OFFICIAL COUNT.

The correctness of the first count of the ballots is established by the testimony of the officers of election, both Republican and Democratic.

POLL 1.—The three commissioners of election, Piernas, Roth, and Dubuclet, testified, and Verrett, one of the supervisors—

Amadée Roth, Democrat (p. 56):

Q. How did you count the votes at that poll?—A. Well, we counted them in this way: we took all the straight tickets of each side and set them aside, and then the scratched tickets.

Q. What was the color of the straight Republican ticket?—A. Black.

Q. Did you, after the election, hear any one state that the name of J. H. Acklen had been on any of the Republican tickets?—A. I did after the election.

Q. In the way in which those tickets were counted by you, could the name of J. H. Acklen have been on some of them without your seeing it?—A. Well, it *might* have been, *because I did not count all the tickets*.

Q. Were you a Democratic or a Republican commissioner?—A. For the Democratic party. There were two Republicans, and I was a Democrat.

Q. Did you certify to the returns from that ward as being correct in every particular?—A. Yes, sir; as far as I understand about election returns, because I have taken *a great deal of pains to carry everything along straight*.

Piernas (p. 262):

Q. Did you assist in counting the votes after the polls were closed?—A. Yes, sir; holding the box and seeing the name of the voters.

Q. State in what manner the votes were counted.—A. We counted the vote. We *passed all over the tickets first to see whether there were different names on the tickets, and then we counted the votes*.

Q. Who assisted you in scrutinizing the tickets?—A. Mr. Amadée Roth; all three of us were counting the votes.

Q. Did you carefully scrutinize every ticket and the name on every ticket?—A. Yes, sir.

Q. Before you counted them?—A. Yes, sir.

Q. Do you remember the vote for member of Congress at that poll?—A. I can't recollect what it was exactly, because I did not take no memorandum.

Q. You don't remember the vote?—A. Not in special or particular.

Q. Mr. Piernas, in scrutinizing these tickets and in examining them *did you examine every name on the ticket*?—A. Yes, sir; *every name*.

Q. If there had been any Republican tickets with the name of Mr. Acklen on for Congress, would you have seen them?—A. I would, but I did not see none of them.

Q. If there had been any tickets with no name on for member of Congress, would you have seen them?—A. All the Republican tickets had the name of Darrall on—*every one of them*.

Q. What kind of tickets were there in the poll? Was there more than one kind of Republican ticket?—A. There was another kind, but there was only one ticket.

Q. Were these Republican tickets a black-back ticket?—A. It was a green ticket.
 Q. Then, was there green tickets?—A. The green ticket was green all over.
 Q. Was that a Republican ticket?—A. That was, so called, a Republican ticket.
 Q. You are positive Mr. Darrall's name was on all these tickets?—A. Yes, sir; I am positive of that.

Verrett (p. 270):

Q. Did you witness or assist in counting the votes as polled after the election?—A. Yes, sir.
 Q. Did you carefully examine the tickets?—A. Yes, sir.
 Q. Did you examine all the tickets?—A. Yes, sir.
 Q. Were you assisted in counting the votes by other officers?—A. Yes, sir.
 Q. How many?—A. There was Mr. Dubuclet, Mr. Leonce Soniat, Mr. Roth. Soniat was Democratic supervisor. There was another gentleman there—I can't recollect his name; he was only an assistant.
 Q. Was there three commissioners and two United States supervisors at the poll?—A. Yes, sir.
 Q. Did you scrutinize the tickets before they were counted?—A. Yes, sir.
 Q. Who looked over the tickets; what officers looked over the tickets and scrutinized the names on them?—A. The same ones that I just now mentioned.
 Q. Did you yourself carefully observe every ticket and the names on them?—A. Yes, sir.
 Q. Can you give the number of votes received by each candidate for Congress, or near?—A. No, sir. I never took no statement; I did have one at the time, but I lost it.
 Q. Have you heard of a recount of the votes made in that box?—A. Yes, sir; I heard some conversation about it when I came up in Plaquemine here some time ago.
 Q. Would it be possible for three commissioners of elections, assisted by two United States supervisors, acting under oath, to have made any mistake in counting and compiling of the vote as it was done by yourself?—A. I should think not, because they were very particular in the count.
 Q. As the votes were counted could you have made a mistake of one hundred or two hundred votes for member of Congress?—A. No, sir.

Dubuclet (p. 264):

Q. Did you assist in counting the votes as polled, after the election?—A. Towards the last I helped to count the votes. I counted the scratched tickets, but the whole tickets was counted by Mr. Piernas and Mr. Amadée Roth.
 Q. When you opened the box, who took the tickets out?—A. Mr. Piernas and Mr. Roth.
 Q. As you only counted the scratched tickets, Mr. Dubuclet, could there have been any mistakes made on the other tickets and you not know it?—A. I did not think they could make any mistake. I know they did not make any.
 Q. How do you know they did not make any?—A. Because they was sworn. I suppose that they was to do it, and we were all sworn together to do it correct.
 Q. You were tallying, were you not?—A. Yes, sir.

POLL 2.—Craig and Smith, commissioners of election, and Davidson, supervisor testified—

Smith, Democrat (p. 54):

Q. Did you count or assist in counting the votes at that poll?—A. I assisted in counting them.
 Q. Describe the manner in which the votes were counted.—A. The box was opened and the tickets were taken out, and the Democratic tickets were strung on a string and the Republican tickets were strung on a string, and the scratched tickets also, and then they were taken off and called off of each string.
 Q. Did you call off the tickets?—A. No, sir; I did not.
 Q. Did you take the tickets from the box? Did you scrutinize them in any manner?—A. I saw the gentleman taking them out. I was present and saw him take them out and string them on the string, as I told you.
 Q. You were one of the commissioners?—A. Yes, sir. There was a marshal there also who superintended everything. I saw everything.
 Q. You say you did not scrutinize the votes?—A. No, sir; I never looked at them.
 Q. Did you certify to the returns as being correct after the tally-sheets were made out?—A. Well, the account, sir, was right as called off.
 Q. Did you certify it as being correct?—A. Yes, sir; as commissioner.

Davidson (p. 249), a member of the legislature:

Q. Did you take any part in the counting of the votes?—A. I did when the poll was

closed. The box was opened, and Mr. Robert O. Hebert took out the tickets and examined them, and we held them up and looked at them; and Mr. Craig, he was another Republican, stood right on the other side of him; and Mr. J. D. Hebert, he was a Democratic supervisor, he stood on the other side; and Mr. Hebert would take the tickets out, and he would say, "straight Republican ticket," or whatever the ticket might be, and these three men would look over. They would count the tickets to Mr. William A. Smith—he was the Democratic supervisor—and Mr. Smith held a needle with thread on it, and I took the tickets from Mr. Smith and put them on the needle, and Mr. Smith would pull the string. I put straight Republican tickets on one string; that is, just as they handed them out. When we would come to a straight Democratic ticket, we would lay them in a separate pile, and when we would come to a scratched ticket we would lay them in a separate pile. The straight Republican tickets were strung; then we strung the Democratic tickets.

Q. Did they string the scratched tickets?—A. They were strung after they were counted, on a separate string.

Q. In placing these tickets on the needle did you place the face of the ticket upward?—A. The face upward.

Q. Did you scrutinize and notice what names were on those tickets as you placed them on the needle?—A. We did, because we noticed at the time that Mr. Carville was spelled "Clarville," and also that Mr. Wheeler's name was spelled "Weeler" instead of "Wheeler."

Q. Who first noticed these mistakes on the tickets?—A. The one of Mr. Carville's was by Mr. Robert O. Hebert, and the one of Wheeler's I discovered it myself in distributing the tickets.

Q. You knew, Mr. Davidson, that these Republican tickets with Mr. Acklen's name on them were in existence before the election?—A. Oh, yes.

Q. Now, then, knowing that, and in stringing these tickets, did you carefully observe whether any of those tickets with his name on them were voted?—A. I did.

Q. Were any of them voted as a matter of fact at that poll?—A. Not one.

Q. Do you remember, Mr. Davidson, about the vote for member of Congress at that poll?—A. Three hundred and odd; I don't exactly know.

Q. Well, about how many?—A. About one hundred and fifteen for Mr. Acklen or one hundred and fourteen.

Q. Have you heard of a recount that was made of the votes in that poll?—A. I have heard of it.

Q. Have you heard or do you know the number of votes for member of Congress in that recount as claimed?—A. I seen, according to what was published in the Times, there has been a change of about three hundred votes, something in the neighborhood of three hundred votes.

Q. Could a mistake of that magnitude have been possible in the manner in which these tickets were counted and scrutinized?—A. No, sir; because every one there seemed anxious to see them counted. There was more Democratic spectators there than Republicans.

Q. How, then, do you account for the change in the number of votes as called for in this recount?—A. I cannot account for it unless the boxes had been stuffed since they have been deposited in the clerk's hands.

Craig (p. 272):

Q. Did you assist in counting the votes, as polled, after the election?—A. Yes, sir; I did.

Q. Did you examine the tickets carefully and scrutinize all the names on the tickets?—A. Yes, sir; I did, to the best of my knowledge.

Q. Did you handle the tickets yourself?—A. Yes, sir.

Q. All of them?—A. Yes, sir; I had taken the tickets out with the assistance of Mr. Robert Hebert; and Mr. Smith was also on one side tallying, and Mr. Robert Hebert was on the other. I scrutinized the tickets from the box.

Q. Have you heard of the recount of the vote for Congressman, made at the request of Mr. Acklen, at your poll?—A. Yes, sir; I have heard of it.

Q. In counting these tickets, are you sure Mr. Acklen's name was not on any of the Republican tickets?—A. Yes, sir; I am sure of that; his name was not on.

Q. Mr. Craig, it is claimed in this recount that instead of 394 Mr. Darrall received only 86 votes at your poll. Could such a mistake have been possible?—A. It is impossible, sir, from the very reason that the tickets were counted too careful by R. Hebert, who was standing just behind me. Him and I looked over the tickets very carefully, and there could not have been possibly such a mistake.

Q. Could it have been possible that instead of 115 votes Mr. Acklen had 340 votes in your box? Could such a mistake have been possible?—A. It is impossible, sir, to my eye-sight.

Q. Is your eye-sight good?—A. Perfectly good, sir.

Q. Could it have been possible, Mr. Craig, that there was 90 of those votes that had no name on for Congress?—A. No, sir; it could not have been possible.

Q. Mr. Craig, how would you account, then, for this difference between the vote as you counted it, which was 394 for Darrall and 115 for Acklen, and the vote as claimed in this recount? How would you explain that?—A. It would be impossible for me to say Mr. Acklen was elected there by the Republican votes unless we were all blind.

POLL 5.—The commissioners of election were Talbott, Buttrick, and Coleman; United States supervisors were Parker and Gourrier. All testified.

Talbott, Democrat, a lawyer (p. 46):

Q. Describe the manner in which the votes at that poll were counted.—A. Well, the straight Republican tickets and the straight Democratic tickets and the scratched tickets were each placed separately in piles, and the aggregate number of each was put down on the tally-sheet.

Q. What was the color of the straight Republican tickets issued to the voters in this parish?—A. I think it was dark color, sir.

Q. Did you after the election ascertain or hear the fact that some of those Republican tickets bore the name of J. H. Acklen for Congress instead of that of C. B. Darrall?—A. I could not say that I did.

Q. In the way that you counted those tickets, could the name of J. H. Acklen have been on some of them without your seeing it?—A. Well, yes, sir; that might possibly have occurred.

Q. After you finished the count what did you do with the tickets?—A. We placed them in the box and sealed it. I do not think that the opening of the lock was sealed.

Gourrier, Democratic supervisor (p. 86):

Q. Did you participate in the counting of the votes?—A. No, sir; I just stood there and saw them coming out. I did not examine any tickets nor count them. I helped to make out the tally-sheets in advance of opening the box, and after they were run up until they were no use I cast them aside.

Buttrick, Republican commissioner (pp. 238 and 240):

Q. Did you see any Republican ticket on the day of election that did not have the name of the Republican nominee upon it?—A. No, sir.

Q. Did you see any previous to the day of election?—A. I did. I saw a ticket the day previous to the election.

Q. What kind of a ticket was that? Did it resemble the regular Republican ticket?—A. Exactly; except Mr. Acklen's name was in place of Mr. Darrall's.

Q. Were any of those tickets distributed on the day of election to your knowledge?—A. Not to my knowledge.

Q. Were any of them voted at the poll where you were the commissioner?—A. No, sir; not at the poll at which I was a commissioner.

Q. In what manner were the votes counted by the commissioners of election?—A. They were taken from the box by Mr. Coleman, the Republican commissioner, passed then to Mr. Talbert, who examined the tickets, saw that it was not scratched—examined the face of the ticket—and where the ticket showed straight it was laid in a pile by itself, the straight Democratic and straight Republican tickets. They were then counted; then the scratched tickets were called off.

Q. Were these tickets carefully scrutinized as they were taken from the box?—A. By the two commissioners; not by myself, but by Messrs. Talbot and Coleman.

Q. Were they carefully scrutinized by the United States commissioners?—A. One of the commissioners.

Q. Which one?—A. I can't give you his name.

Q. Mr. Parker?—A. Yes, sir; Mr. Parker scrutinized the tickets. Mr. Gourrier, the Democratic supervisor, and I laid off and made up the returns.

Q. Do you remember the number of votes cast for member of Congress at that poll?—A. I think it was 270.

Q. That was the total?—A. The total was 270.

Q. Do you know how many was cast for each candidate?—A. There was 63 votes for Mr. Acklen and 207 for Mr. Darrall.

Q. Your official return shows that?—A. Yes, sir; it does show that.

Q. Are you satisfied that that return was correct in every particular?—A. I am satisfied. I swore to it.

Q. Could there have been any material mistake the way the tickets were counted?—A. I don't think there could have been any mistake at all; certainly not material mistake.

Q. Have you heard, or do you know, the result of the recount of the votes in that

box for member of Congress?—A. I heard that it altered it very material; that it made a material alteration.

Q. Could it have been possible, on the ballots as you counted them, there would be only 79 votes cast for Mr. Darrall instead of 207?—A. No, sir.

Q. Could it have been possible for Mr. Acklen's name to have been on one hundred and fifty-eight of those tickets instead of sixty-three?—A. Impossible.

Cross:

Q. I understand you to have stated that these tickets were taken out of the box by Coleman; and they were handed to Talbert and scrutinized by him, and that you and Mr. Guèrièrè laid off and made up the tally-sheets?—A. Yes, sir.

Q. Under the circumstances could you have seen every name on every ticket that was scrutinized by Mr. Talbert?—A. Certainly I did not see any of them.

Q. Had the name of J. H. Acklen been on many of those tickets scrutinized by Mr. Talbert, and as you did not see any of them, can you swear that such could not have been the case without your knowledge?—A. Yes, sir; because I have complete knowledge of Mr. Talbert and Mr. Coleman. I know that they are honest men and intelligent.

Q. You swear purely as to their opinion of their honesty and not as to your knowledge of the tickets?—A. I did not see the tickets at the same time that I swore to the returns.

Q. Then your swearing to the returns did not prevent the fact of the tickets having had my name on for Congress instead of Dr. Darrall's being counted in an improper manner?—A. Yes, sir, it did. They were two gentlemen fully competent to do it, and in whom I had confidence, that scanned the tickets. One was a Democrat and the other a Republican; pretty sure there was no cheating.

Q. You are prepared to swear to the returns as given to you by Mr. Talbert?—A. Yes, sir.

Q. Then you are prepared to swear to the returns upon Mr. Talbert's count and not upon your count?—A. Yes, sir; I am prepared to swear to the returns on Mr. Talbert's count and Mr. Coleman's.

Q. Had Mr. Talbert afterward sworn that he did not scrutinize the tickets for the Congressional nominee, and that that mistake could have occurred because he tabulated the tickets in bulk, would you have been then willing to have sworn to the returns without examining the tickets yourself?—A. After seeing Mr. Talbert's scrutiny I should very much doubt whether he would swear to anything of the kind, because I know that he examined the tickets very carefully and the face of the tickets.

Coleman, Republican commissioner (p. 255:)

Q. Did you assist in counting the votes as polled after the election?—A. Yes, sir.

Q. Did you carefully examine and scrutinize the ticket and every name on the ticket?—A. Yes, sir; I did.

Q. Who assisted you in making this scrutiny of the tickets?—A. Mr. Parker first; after Mr. Parker, then I and Mr. Talbert.

Q. Were these gentlemen also officers of the election?—A. Yes, sir; they were.

Q. Then the three officers of the election scrutinized the tickets?—A. Yes, sir.

Q. Would it not be utterly impossible for three commissioners of election, assisted by two United States supervisors of election, all acting under oath, to have made any material mistake in counting and compiling the vote?—A. I don't think that many men could make a mistake looking over one ticket; there were three men examined the ticket.

Q. At your poll were there three commissioners and two United States supervisors?—A. Yea, sir; there were.

Q. Including yourself?—A. Yes, sir; including myself.

Q. Mr. Coleman, have you heard of the recount of the vote for member of Congress, made at the request of Mr. Acklen at the box where you were present?—A. Yes, sir; I have.

Q. Can you give the vote for the member of Congress at your poll, as you counted them, assisted by the other commissioners, as near as you recollect?—A. To my remembrance, as near as I can come at it, it is about two hundred and seven; that is as near as my remembrance is.

Q. What was the vote of the other?—A. Sixty-three, if I am not mistaken.

Q. Do you know or have you heard how many votes were given to each member of Congress on the recount of your box?—A. By the recount? No, sir; I cannot say positively.

Q. It is claimed by the receiver of the votes at your poll that there was in the box thirty-two tickets which did not have any name on them for Congress. Would or would not the commissioners have discovered that fact in counting these blank votes?—A. They would, Mr. Darrall.

Q. It is also claimed by the recount at this poll that Mr. Darrall only received 79 votes instead of 207. Would such a mistake have been possible?—A. I don't think it were possible.

Q. Did you seal the box before bringing it to the court-house?—A. Yes, sir.

Q. In what manner?—A. I sealed it over the hole where the ballots were shoved in. The key-hole—I did not seal it. I sealed the ballot-hole, and delivered the box to the constable. I kept the key until the box was delivered to the clerk of the court; then I delivered him the key.

Q. Were you assisted in sealing the box by the other commissioners?—A. Yes, sir; I was.

Q. Did you place any seal or any paper over the key-hole?—A. No, sir; none at all.

Q. Mr. Coleman, how do you account for the difference between the votes as counted by yourself and the commissioners at the poll and the votes counted in that box on the recount?—A. I don't exactly understand you. The only way that I see it could have occurred, there was more tickets counted than was put in there. Because I am confident within myself that the other three officers were there with me, and I don't think the mistake could have been made. The onliest way I see how it could be, they were counted and put in afterward.

Q. From the manner in which those boxes were sealed and delivered to the clerk's office, could the box have been unlocked and the tickets changed at any time?—A. Of course.

Cross:

Q. Now, Mr. Coleman, will you please describe exactly how this count was made, as you did not previously describe it carefully—the count of the tickets?—A. The way them tickets was counted, I unlocked the box; then I taken—myself and Parker—taken the tickets out, and laying them all out straight on the barrel, the straight Republican tickets all to themselves, and the straight Democratic tickets all to themselves, and the scratched tickets all to themselves, in separate piles; then we taken the straight Republican tickets, wrote each name down on the ticket carefully as we could; and each name was given his complement of votes, his number of votes; the names was taken down as they were on the ticket, and were written down; and the Democratic tickets the same way; and the scratched tickets was counted, and those that were not scratched; the name was taken down straight on the ticket, the names written, and the complement of votes written down.

Q. Did you handle all the tickets yourself?—A. Yes, sir.

Parker, Republican supervisor (pp. 258 and 259):

Q. Did you assist in counting the votes as polled, after the election?—A. Yes, sir.

Q. Did you examine and scrutinize each ticket, and the name on each ticket carefully?—A. Yes, sir; I did, carefully.

Q. Who assisted you in making this scrutiny of the tickets?—A. There was Mr. Coleman, Mr. Tolbert, and myself.

Q. Would it not be utterly impossible for three commissioners of election and two United States supervisors of election, all acting under oath, to have made any material mistake in counting and compiling the vote?—A. Yes, sir; it would.

Q. Were there three commissioners and two United States supervisors at your poll, including yourself?—A. Yes, sir.

Q. Have you heard of the recount of the votes of that box (for Congressman) made at the request of Mr. Acklen?—A. Yes, sir; I have.

Q. Did this recount, as you understand, make any material change in the vote for member of Congress?—A. Yes, sir; it made a great deal of change.

Q. Give the number of votes, as near as you recollect, of each candidate for Congress received at your poll?—A. Darrall 207, and Acklen 63.

Q. Do you know how many votes each candidate was accredited with on this recount; have you heard or do you know?—A. No, sir; I have not heard.

Q. It is claimed by this recount that the vote for Congressman at poll 5—that there were in the box thirty-two blank tickets for member of Congress. Would or not the commissioners have discovered that fact in counting the votes, if such had been the fact?—A. Yes, sir; they would.

Q. It is also claimed on the recount at poll 5 that Mr. Darrall only received 79 votes instead of 207. Would such a mistake have been possible?—A. No, sir; it would not.

Q. It is also claimed that Mr. Acklen received 158 votes instead of 63. As the votes were counted and compiled, would such a mistake have been possible?—A. No, sir.

Q. Mr. Parker, how do you account for the difference between the votes for member of Congress as you and the other officers counted it on the day of the election, and the vote according to this recount?—A. It seems to me that there is something wrong about the ballots, the votes.

Q. You mean there was something wrong when you counted them?—A. No, sir; there was nothing wrong about them when I counted them; they was wrong when they were recounted.

Q. As you and the other commissioners counted them, could there have been anything wrong without your seeing it?—A. No, sir; there could not.

POLL 6.—Wilson and Johnson, Republican commissioners, and Felix Roth, Democratic commissioner, testified.

Felix Roth, Democrat (p. 55):

Q. Did you count or assist in counting the votes there?—A. I did, sir.

Q. Describe the way in which the votes were counted.—A. The tickets were piled in three different lots.

Q. What was the color of the straight Republican ticket issued in this parish?—A. The Republican ticket had a black back similar to the one you are holding in your hand.

Q. In the way in which those votes were counted could my name have been on some of them without your seeing it?—A. It might have been, sir; although I took a good deal of precaution to look over it.

Q. You represented the Democratic party at that poll?—A. Yes, sir.

Q. You certified the returns from that poll as being correct?—A. Yes, sir; and it was correct as far as I could do it, sir. The only thing I might have slipped was the name in this case. I had very little comfort and a great deal of difficulty. It was one of the coldest nights that I ever saw in my life and I had no fire. That was the only thing that might have happened; errors might have happened. I do not pretend to be correct in every case; I tried to do justice to both parties.

Q. Did you take the tickets from the box?—A. Yes, sir.

Q. Were they scrutinized by anybody else but you?—A. Yes, sir; two others. I appointed two others to keep the tally.

Thomas Johnson, Republican (p. 57):

Q. Did you count or help count the votes at that poll?—A. Yes, sir.

Q. How did you take them out of the box?—A. I took them out of the box and gave them to another person to call them out. Mr. Roth, the other commissioner, was there. We then put them down in the tally-sheets.

Q. Did you arrange them all in piles?—A. Yes, sir; the Republican tickets together. We had two Republican tickets, the blue ticket and the black ticket, and then we had the straight Democratic ticket. We counted each together.

Q. Did you after the election hear that J. H. Acklen's name was on some of the Republican tickets?—A. No, sir; I did not.

Q. What was the color of the Republican ticket?—A. There was one black one and one blue one, and the Democratic ticket was a plain white one.

Q. After you finished the count what did you do with the tickets?—A. Put them in the box.

Q. Did you deliver the box to the clerk of the court yourself?—A. No, sir; I did not; I sent it by the supervisor of registration.

Q. What was his name?—A. Mr. A. J. Barnes.

Cross-examined by Mr. JOLLEY:

Q. Were you a Republican commissioner?—A. Yes, sir; I was nominated by the Republicans here for commissioner.

Q. In looking over those tickets did you scrutinize them very carefully?—A. I took all my attention on those tickets.

Q. You certified to the returns as being correct?—A. Yes, sir; as correct.

Ed. Wilson, Republican (p. 266):

Q. Did you assist in counting the votes as polled, after the election?—A. Yes, sir.

Q. Did you scrutinize and examine the tickets carefully?—A. Yes, sir; I examined all the tickets.

Q. Did you examine all the names on the tickets as you took them from the box?—A. Yes, sir; one at a time.

Q. Did you take all the tickets from the box yourself?—A. Yes, sir; I was the only one.

Q. As you took each ticket out separately, did you examine it in the manner you have spoken?—A. Yes, sir.

Q. Was the count of the votes and the returns as certified to by yourself for member of Congress correct in every particular?—A. Yes, sir.

Q. Would it not have been impossible for three commissioners of election, assisted by two United States supervisors, all acting under oath, to have made any material mistake in counting and compiling the votes?—A. Yes, sir.

Q. Was there three commissioners and two United States supervisors at your poll?—A. Yes, sir.

Q. How many of those officers were Democrats?—A. Three.

Q. Have you heard of the recount of the votes at your poll for member of Congress, made at the request of Mr. Acklen?—A. Yes, sir; I believe I heard about that.

Q. Can you give the number of votes polled for member of Congress at that, your poll, actually cast?—A. No, sir.

Q. Or about the number?—A. They was all counted, and it was down on the tally.

Q. Did not Mr. Darrall receive a large majority of the votes cast?—A. Yes, sir.

Q. It is claimed by this recount of the votes that Mr. Acklen received a large majority. Could that have been possible, to have made a mistake of that kind; could it have been possible for you to make a mistake of that kind?—A. No, sir. I could not have made no mistake in counting the votes.

Q. You have said that you carefully scrutinized every ticket?—A. Every ticket that came out of the box.

Q. Was Mr. Acklen's name on any of the Republican tickets?—A. No, sir.

Q. Not one?—A. No, sir.

Q. Neither on the black nor the blue tickets?—A. No, sir.

Q. In counting these votes, could it have been possible that the name of the candidate for Congress on one hundred and thirty-five tickets would be blank and you not see it?—A. No, sir.

Q. And you can positively swear that you examined the names on every ticket?—A. Yes, sir. I took them out one by one.

POLL 7.—Le Blanc, commissioner, a Republican (called by contestant), and Carville, Republican supervisor, testified:

Adonis Le Blanc (p. 58):

Q. Did you count or help count the votes there?—A. I kept a tally.

Q. State how the votes were taken out of the box and assorted and counted.—A. So far as I paid attention they were taken by the handful and spread on the table, and the Republican votes were put on one side and the Democratic votes on another. If they got in with the Republican tickets they kept them until they got up to ten, I believe, and they tallied them. So far as taking them out of the box is concerned, they were taken out by the handful.

Q. You say you cannot identify the box?—A. No, sir; I cannot.

Q. Were you a commissioner for the Republicans or for the Democrats?—A. For the Republicans.

Q. Did you handle any of the tickets yourself?—A. No, sir; none of them.

Q. You certified to the returns from that poll?—A. Yes, sir, so far as the counting was concerned; that is, from what Mr. Allian and Mr. Carville stated.

J. C. Carville (pp. 197-200), member of the legislature:

Q. Did you witness and scrutinize the counting of all the votes there?—A. Yes, sir.

Q. Did you handle any of the tickets?—A. No, sir; I did not handle any of the tickets at the count. I only examined them by looking at the commissioners as they counted them.

Q. Looking over the shoulders of the commissioners?—A. Yes, sir. I did not handle any of the tickets.

Q. Did you see the returns made by the commissioners signed?—A. I did.

Q. Were the returns certified to by all the commissioners as correct?—A. They were certified to by the commissioners as correct.

Q. Are you satisfied that the count of the votes as made by the commissioners of election and certified to by them was correct in every particular?—A. As far as I know anything about it, it was correct. I don't know anything to the contrary.

Q. Do you remember the number of votes Mr. Darrall received at that poll?—A. He received 187, certified by commissioners.

Q. Do you remember the number of votes cast for Mr. Acklen at that poll, his opponent?—A. It was 58 or 59, I think. I don't know which. Somewhere about that neighborhood. Am not positive; but it ranges in that neighborhood somewhere.

Q. Do you remember how many blank votes there were found in that box?—A. Not one.

Q. That is, for member of Congress?—A. Yes, sir.

Q. You are positive of that?—A. Yes, sir. I never heard of any blank votes being found there. I never heard of any such thing on all the day of election in counting the ballots.

Q. Have you heard that that box, No. 7, has been reopened and recounted, and the result of that recount?—A. I have.

Q. As the vote was recounted, it stands 96 for Darrall, 79 for Acklen, and 73 blanks. Being present at that poll, having seen the votes counted, the returns made, do you believe it possible that such a mistake could have been made by the commissioners of election at that poll?—A. I don't know what about the commissioners; but I don't think that would have escaped my notice. As for the commissioners, I can't answer.

Q. Was it not generally conceded by both Democrats and Republicans that the vote of Darrall and that of Acklen as certified to by the register of voters was correct?—A. All, with one exception. The Democrats did not understand how Mr. Acklen got more votes in the parish than the balance did, but otherwise it was satisfactory.

Q. Do you know how much more he got, and at what poll?—A. Well, I don't know how many more he got. Poll No. 9, called Grosse Tête poll—

Q. Was that the only poll in which Mr. Acklen ran ahead of his ticket?—A. I could not answer that; I am not well enough posted.

Q. Mr. Carville, are you acquainted with the commissioners of election at poll 7?—A. Yes, sir.

Q. What is their standing in the community?—A. They stand very well.

Q. Honest, honorable men?—A. Yes, sir; honest, honorable men.

Q. What is the educational qualification of those men?—A. They are all educated. Julian Allen is a white man, a Democrat, lawyer; Adonis Le Blanc is a white man also; he has been a teacher in the parish for several years. The other man is a colored man; reads and writes very well.

Q. What is the reputation of the Democratic commissioner as to prudence?—A. He has a very high reputation of being a straightforward, honest man; stands very well in the community he lives in, and respected by everybody.

Q. Is he prudent, careful, in all his transactions?—A. Very much so; very careful man.

Q. Do you believe it possible that he, as a sworn officer of the law, could have been so negligent as to have committed such an error?—A. What do you want; simply my opinion about it?

Q. Yes.—A. Well, I don't think he would acknowledge that himself. I can't answer that in regard to myself, but, as to the commissioner, I don't think he would.

The foregoing testimony is in reference to the five polls which alone are in contest, and shows the official count was carefully made.

LAW OF LOUISIANA FOR PRESERVATION OF BALLOTS.

SEC. 13. *Be it further enacted, &c.,* That it shall be the duty of the commissioners of election at each poll or voting place to keep a list of the names of the persons voting at such poll or voting place, which list shall be numbered from one to the end; and said lists of voters, with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners immediately on closing of the polls, and before leaving the place, and before opening the box. If no judge or justice of the peace, or other person authorized to administer such oath, be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting place immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any by-stander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed. (Act 98, 1872, p. 174.)

The annexed certificate from the clerk of the district court shows that the first term of court was held January 1, and the said recount was not had till March, the ballots only being legal evidence when counted before the term of court, as after that the clerk is not responsible for safe-keeping of either boxes or ballots.

Certificate of clerk.—(Page 178).

STATE OF LOUISIANA,
Parish of Iberville:

CLERK'S OFFICE, FIFTH JUDICIAL DISTRICT COURT.

I, Charles H. Gordon, clerk of the fifth judicial district court of Louisiana, in and for the parish of Iberville, do hereby certify that the first term of the said district court

for the present year was held in Iberville Parish on Tuesday, the 2d day of January, A. D. 1877, as the first Monday was the 1st and a *dies non*, his honor James L. Cole presiding.

Witness my hand, officially, and the impress of the seal of said court, at the parish of Iberville, this 8th day of May, A. D. 1877.

[SEAL.]

C. H. GORDON, *Clerk*.

The boxes were not all delivered to the clerk of court, but some to the supervisor of registration or his clerk, unauthorized parties. How long they were in those hands is not shown.

Crowell, then clerk of court, says (p. 59):

Q. After the election, did you receive all the boxes according to law? Were they delivered by the commissioners?—A. I received the chief part of them from the commissioners. I received two or three from the clerk of the registrar here, I believe. By mistake they delivered them at his office instead of here.

The evidence shows that the box from poll 7 was thus delivered to the register or his clerk instead of the clerk of court (p. 59), and box from poll 6 by Barnes, an unauthorized party (pp. 55 and 94).

This law has not been complied with, as appears from the testimony of the officers of election at the different polls, both Democrat and Republican, and from the evidence of the custodian of the boxes, the clerk of court.

HOW BOXES WERE SEALED AND HOW THEY WERE FOUND ON RECOUNT.

POLL 1.—Box was properly sealed with sealing-wax. Seals were found broken.

Amadee Roth, Democratic commissioner of that poll (p. 56):

Q. Would you recognize the box?—A. No, sir; I do not believe I would.

(The box referred to by the witness was here produced by the clerk of the court for identification.)

Q. Is that your signature on that box?—A. Yes, sir.

Q. Is that the box?—A. I could not tell you whether it is the box, but that is my signature.

Cross-examined by Mr. JOLLEY:

Q. Look at that box at the key-hole. Did you cover that up and sign it as you did on the top?—A. Yes, sir; I put "E. Roth"—that is my name—on top.

Q. The key-hole looks like the paper had been torn from it?—A. I could not tell that. Of course it has not that same look as when I signed it.

POLL 6.—Box was properly sealed with sealing-wax. Seals were found broken.

Felix Roth, Democratic commissioner at that poll (p. 55):

(The box referred to by the witness was here produced by the clerk of the court for identification.)

Q. Is that the box?—A. Yes, sir; that is my name there.

Q. Is it just as you delivered it to the justice?—A. Yes, sir; that is it, but this has been resealed. Of course it had to be opened once to count.

Q. What were the names of the Republican commissioners with you at that poll?—A. Johnson was one—I do not know his first name—and Wilson was the other. I do not know his first name, either. His name is on the box. They were both Republicans.

Cross-examined by Mr. JOLLEY:

Q. You say that box has been resealed over the key-hole?—A. Yes, sir; I suppose it was, as far as my recollection serves me.

Q. Did you write your signature over the paper that was over the key-hole?—A. Yes, sir, I did; at least, as far as my recollection serves me, I must have done it.

Gordon, the clerk, and his deputy, admit seals broken, but explains on account of dampness of office.

Gordon, the clerk (p. 61):

Q. Now, one of the witnesses noticed that over the key-hole of one box the paper had been fractured. These boxes have been in your possession. How do you account for that?—A. Well, from the simple fact that anybody can come to this office and examine these boxes and sit in the office, and all my predecessors will tell you that the office is very damp, and you can catch the pneumonia or anything else here. For this reason I say that the dampness has softened the wax in such a way that the papers have become loose; and I think it very likely, too, that in removing the boxes from this place to that place I may have dented them in some way. Every day I sweep up this office, and you will find that considerable dust accumulates, and very likely in dusting the box I might have knocked a hole in it, or at least in the paper.

(The witness here produced a worn-out and dilapidated duster and exhibited it to the judge and by-standers.)

Landry, deputy clerk (p. 62):

Q. Those boxes that have the papers broken on them were sealed with wax?—A. Well, I could not swear to that fact. I could only swear to them as I see them now, that they are sealed with wax. I never examined the boxes to see what they were sealed with when they first came in.

Q. Is not this court-house very damp?—A. Yes, sir; I say that the dampness of the office would affect the seals of the boxes if they are sealed with mucilage. Now, I do not know whether it could affect the sealing-wax, but if the dampness does affect the sealing-wax they would be affected in this office, because this office is very damp.

POLL 2.—Was only sealed with paper and mucilage over the key-hole.

Hon. J. S. Davidson, United States supervisor (p. 249):

Q. Did you remain and witness the count of all the votes and the sealing of the boxes?—A. Yes, sir.

Q. What was done with the box after they were all counted?—A. Close it up in the box. The boxes were sealed.

Q. In what manner were the boxes sealed?—A. Sealed over the key-hole.

Q. With sealing-wax or what?—A. With mucilage.

Q. Was any sealing-wax used?—A. With mucilage and over the key-hole—where the votes were put in also—and the commissioners wrote their names over the hole where the votes were deposited, on the paper that was put over the hole.

Q. Did they write their names over the paper across the key-hole?—A. No, sir; they did not.

Q. When the boxes were sealed in this way could the paper have been removed and the tickets taken out and replaced with paper of the same kind placed over them?—A. That could have been done very handy, because there was no name over the key-hole, and another paper of the same kind could have been put over without any trouble.

POLL 7.—Was only sealed with paper and mucilage; no sealing-wax used.

Hon. J. C. Carville, United States supervisor (p. 197):

Q. Do you remember the manner in which the commissioners sealed the box after the votes were counted and replaced in the box?—A. Yes, sir.

Q. Now, will you please describe?—A. The ballots were counted. After they were counted they were put back in the box. The commissioners were satisfied and the two United States supervisors were also satisfied.

Q. That is, the Democratic and Republican?—A. Yes, sir; they were both satisfied. As there was no dispute in regard to anything, we just simply put a piece of paper with mucilage over the top where they put the ballot in, and then over the key-hole another piece of paper with mucilage; did not seal it or put the name on it.

POLL 5.—Was sealed with wax on top, but nothing was placed over key-hole.

Talbott, Democratic commissioner, poll 5 (p. 47):

Q. After you finished the count what did you do with the tickets?—A. We placed them in the box and sealed it. I do not think that the opening of the lock was sealed.

Coleman, Republican commissioner, poll 5 (p. 256):

Q. Did you seal the box before bringing it to the court-house?—A. Yes, sir.

Q. In what manner?—A. I sealed it over the hole where the ballots was shoved. The key-hole, I did not seal it. I sealed the ballot-hole, and delivered the box to constable. I kept the key until the box was delivered to the clerk of the court; I delivered him the key.

Q. Were you assisted in sealing the box by the other commissioners?—A. Yes, I was.

Q. Did you place any seal or any paper over the key-hole?—A. No, sir; none at

Q. From the manner in which those boxes were sealed and delivered to the clerk's office, could the box have been unlocked and the tickets changed at any time? Of course.

Parker, Republican, United States supervisor (p. 259):

Q. What did you do with the ballots after counting them?—A. Put them in the box and sealed the ballot-hole.

Q. On top of the box?—A. Yes, sir.

Q. How was it sealed?—A. It was crossed with wax and burned so it would seal.

Q. Did the commissioners sign their names on it?—A. Yes, sir; they did.

Q. Did you sign your name on it?—A. No, sir.

Q. Only the State officers signed their names?—A. Yes, sir.

Q. How did you seal the key-hole?—A. We didn't seal the key-hole at all.

Q. Did you place anything over the key-hole?—A. No, sir; they did not.

FROM WHOM THE BALLOT-BOXES WERE RECEIVED AND HOW KEPT BY THE CLERK OF COURT.

Crowell, clerk of court when election was held (pp. 59, 60):

Q. After the election did you receive all the boxes according to law? Were they delivered by the commissioners?—A. I received the chief part of them from the commissioners. I received two or three from the clerk of the registrar here, I believe. By mistake they delivered them at his office instead of here.

Q. Have the boxes since you have received them been in your sole possession until the time of your delivering them to your successor?—A. Yes, sir.

(The clerk here brought in the box from poll No. 7.)

Q. Mr. Adonis Le Blanc said that he could not distinctly testify as to that box. You swear that that was the box delivered to you from that poll, as clerk of the court?—A. I know that it is, and the reason is that I observed that they did not comply with the law in regard to putting the names on it. This box came from Deslois' office to this office.

Q. Does everybody have access through this door during the day?—A. The boxes were deposited here in the clerk's office whilst I was clerk, and I had them piled up here.

Q. Are all these windows closed every night?—A. Yes, sir; it is the clerk's duty to do it.

Q. You carried the key of the office while you were clerk?—A. Yes, sir.

Q. As there are no other papers on that box from poll No. 7, how do you identify it from the others?—A. That is what I observed on the box, and that is the way I identify it now. I remember it as coming from poll No. 7.

Q. But you do not know whether these papers were on it or not?—A. That is the way I identify it. I noticed they had not complied with the law.

Gordon, elected clerk, Acklen's witness (pp. 60, 61):

Q. You are at present clerk of the parish court?—A. Yes, sir.

Q. You are at present in custody of the ballot-boxes in this court?—A. Yes, sir.

Q. Who delivered them to you?—A. My predecessor, Judge Crowell.

Q. Have those boxes been in your sole possession ever since they were delivered up to the present time?—A. Yes, sir.

Q. Can you swear positively, beyond all question, that to the best of your knowledge these boxes have been safely in your keeping up to the present time?—A. Yes, sir.

Q. Are the fastenings of the clerk's office here secure?—A. Yes, sir. Always when we go away from here at night we fasten these windows on the outside, and when they slam to they cannot be opened from the outside at all.

Q. If there had been any entrance made into the building during your absence, could you have detected it?—A. Yes, sir; they would have had to break the door or pulled out the wedge from the fastenings of the windows. I am here during the day all the time.

Q. One of the witnesses testified that he did not remember a certain box because he did not have his signature on it. You have examined the box, and the judge has

tified that that was the box delivered to him and that it was in the same condition in which it was delivered by the witness. Is that the box that he delivered over to you? [Shown box already produced by the clerk.]-A. That is the same box that was delivered to me by my predecessor.

Q. Is it in the same condition in which you received it?—A. Yes, sir.

Q. Now, one of the witnesses noticed that over the key-hole of one box the paper had been fractured. These boxes have been in your possession. How do you account for that?—A. Well, from the simple fact that anybody can come to this office and examine these boxes and sit in the office, and all my predecessors will tell you that the office is very damp and you can catch the pneumonia or anything else here. For this reason I say that the dampness has softened the wax in such a way that the papers have become loose; and I think it very likely, too, that in removing the boxes from this place to that place I may have dented them in some way. Every day I sweep up this office, and you will find that considerable dust accumulates, and very likely in dusting the box I might have knocked a hole in it, or at least in the paper.

[The witness here produced a worn-out and dilapidated duster and exhibited it to the judge and the bystanders.]

Q. Is not that a very poor brush?—A. Yes, sir.

Q. Everything is nearly worn off, except the stick part of it, is it not?—A. Yes, sir; nearly everything.

Q. These boxes have been moved several times, have they not?—A. Yes, sir. That table there used to run right alongside this window, and I took them away from there and put them underneath to give me room. Then afterwards we changed them around so that we could open the blinds, and I put them where they are now.

Q. That is the only box that shows any fracture of the papers on it, and you account for that through the moving of the boxes or some carelessness or something of that kind?—A. Yes, sir; carelessness on my part in moving them.

Q. Have you the keys of all these boxes?—A. Yes, sir; they are in my possession in the office somewhere, but I would have to look for them.

Q. Do you know where they are now?—A. No, sir; but they are in the office.

Q. They are in some of the pigeon-holes?—A. They are inside of the desk, I guess.

Q. You do not carry them with you at all?—A. No, sir.

Landry, deputy clerk, Democrat (p. 62):

Q. You see the boxes every day or two?—A. Yes, sir.

Q. If they had been tampered with overnight or at any time would that fact have been noticed by you, do you think?—A. Yes, sir; so far as I know, the boxes have never been tampered with, so far as taking any papers out or adding any papers to them or anything of that kind.

Q. Is this court-house not very damp?—A. Yes, sir; I say that the dampness of the office would affect the seals of the boxes if they are sealed with mucilage. Now, I do not know whether it could affect the sealing-wax, but if the dampness does affect the sealing-wax they would be affected in this office, because this office is very damp.

Q. Have not those boxes been removed several times?—A. They were moved twice to my knowledge.

Q. Is it not possible that some of those papers on the boxes and some of the wax might have been loosened by the moving of those boxes?—A. Yes, sir; on account of the dampness, which might have unglued some of the paper on them. In moving them some of the papers might have dropped off, for all I know. You will find even now that some of them are very loose.

Cross-examined by Mr. JOLLEY:

Q. Those boxes that have the papers broken on them were sealed with wax?—A. Well, I could not swear to that fact. I could only swear to them as I see them now, that they are sealed with wax. I never examined the boxes to see what they were sealed with when they first came in.

Q. Did you ever examine those boxes before to-day as carefully as you have now since you have been here as deputy clerk?—A. Well, I cannot say that I examined all of them carefully. I examined some of them the other day. The clerk, in order to make more room, moved them the other day and corded them as you see them there, and I remarked that some of them seemed to be loose. I did not pay attention which boxes particularly were loose or not, but I noticed that some of the labels were entirely unglued.

THE LAW OF LOUISIANA AS TO THE APPOINTMENT OF OFFICERS OF ELECTION.

The statute of Louisiana makes the following provision :

SEC. 8. *Be it further enacted, &c., That the election at each poll or voting place shall*

be presided over by three commissioners of election, residents of the parish for at least twelve months next preceding the day of election, who shall be selected from different political parties, and be of good standing in the party to which they belong, and who shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed for State officers. Should only one of the commissioners appointed be present at the hour for opening the poll, he shall appoint another, and both together shall appoint a third, and the commissioners so appointed shall take the oath and perform all the duties of commissioners of election in the same manner as if they had been appointed as provided for regular appointment of commissioners by this act. Any one of the commissioners shall be authorized to administer the oath to the other commissioners.

This law was carefully complied with, as appears from the following testimony. It will be noticed that selections were made from both political parties; that those selections were made on the recommendation of the president of the parish committees of the two parties respectively. It is to be presumed that the men thus recommended and selected would be men whom the respective parties had confidence in and felt they could rely upon to see that the utmost fairness prevailed in the voting and in the counting of the votes. But, in addition to this presumption, we have the testimony directly showing that they were fit and competent men.

F. V. Deslonde, Republican, parish supervisor (pp. 204 and 206) :

Question. Mr. Deslonde, upon whose recommendation did you appoint the commissioners of election?—Answer. Of the chairman of the Democratic committee and member of the Republican or the president of the Republican committee.

Q. State who was the president of the Republican parish committee.—A. I believe it was P. G. Deslonde.

Q. Who was the president of the Democratic parish committee?—A. Jacob McWilliams.

Q. Did you request in writing the chairman of the Republican committee to furnish you names of commissioners?—A. Yes, sir; I did.

Q. Did you make the same request in writing to the chairman of the Democratic committee?—A. I did.

Q. Did they furnish you the names of the various commissioners of the polls?—A. They did.

Q. Did you know the commissioners at poll 5, in the third ward?—A. Mr. Tolbert was one.

Q. What was the number of the commissioners at that poll?—A. I recollect two. Mr. Tolbert on the Democratic side and George Buttrick on the Republican side.

Q. Were they all competent men?—A. They was.

Q. Did you consider, as far as you know or are acquainted, that the commissioners of election at all of these different polls were competent, intelligent men to perform the duties of the office?—A. They was.

Q. What was the vote of the Grosse Tête poll?—A. That is the only box that we had against Dr. Darrall as returned, because it is the closest, and Dr. Darrall had one hundred and odd votes and Mr. Acklen two hundred and odd votes.

Q. Mr. Deslonde, you made your consolidated return from the returns as given by the commissioners of election?—A. Yes, sir.

Q. You then swore to the correctness of your returns as based upon the returns made by the commissioners?—A. Yes, sir; I swore each one of them after they made their returns to me, and then I go to the clerk of the court and swear to my consolidated returns.

Hon. George Wailles, Democratic candidate for senate (pp. 116, 117 and 118) :

Q. You were the regular nominee of the Democratic party for senator from this district, were you not?—A. Yes, sir.

Q. Were you a member of the Democratic parish executive committee?—A. No, sir; I was not.

Q. Did the Democratic party have a representative at each poll in the parish?—A. Well, I was present only at this poll, but I suppose they did. I have no doubt that they did have, and in fact it was understood that they did have.

Q. Was not a Democratic commissioner appointed by the registrar for each poll in the parish?—A. I believe so, sir.

Q. Was not a Democratic United States supervisor appointed for each poll in the

parish?—A. Well, I cannot tell you that. I presume so, but I do not know that there was.

Q. Was it generally known to the Democratic party of this parish that Mr. Wharton was supporting Mr. Acklen previous to the election?—A. Yes, sir; I think it was generally known. The fact is that the question was discussed in the Democratic party in this parish as to whether or not they would run a candidate for the senate. Some gentlemen of the party were in favor of making no nomination at all, and of casting the vote for Wharton, or allowing the vote to be split up, thinking that we could accomplish something by that; but the party in convention determined differently. They, therefore, nominated me and brought me out two days before the election. I was not announced as a candidate until my name appeared upon the tickets.

Q. Did the leading Democrats of the parish know that Mr. Acklen's name was on the regular Republican ticket for Congress?—A. I think they did, sir.

Q. Then it was generally known by the party in that parish that his name was printed on the regular Republican ticket?—A. Well, it was generally known that his name was on the ticket that we considered as the regular Republican ticket. We knew that there were Republican tickets upon which his name did not appear, though.

Q. They knew, of course, that Mr. Darrall's name was on the ticket also, and that he was the regular nominee of the Republican party for Congress?—A. Yes, sir.

Q. They knew also that there was a regular Republican ticket in existence with the Congressman's name left in blank?—A. Yes, sir; they knew that also; it was a Republican ticket in all respects, except that there was a blank left for the Congressman; it contained the names of the Republican electors and the candidates for the State offices, and so on.

Q. Were not the Democratic commissioners at the different polls competent and energetic men?—A. Well, I do not recollect who the commissioners were. The commissioners at the poll in this place were competent and intelligent men.

Q. Do you know Mr. Edward Talbot?—A. Yes, sir.

Q. Is he a competent man, and was he an energetic supporter of the Democratic party?—A. Yes, sir.

Q. Do you know Mr. Gourrier?—A. Yes, sir.

Q. He was a strong supporter of the Democratic party, was he not?—A. Yes, sir; I think so.

Q. Both of those gentlemen were supporters of Mr. Acklen?—A. Yes, sir; as far as I knew, they were.

Q. Do you know Mr. Julian Allain?—A. Yes, sir.

Q. Is he a strong supporter of the Democratic party?—A. Yes, sir; he is a Democrat. He has since removed from this parish. I think he was always considered to be a consistent Democrat.

Q. Is he a competent man?—A. O, yes, sir.

Q. Do you know Felix Roux?—A. Yes, sir.

Q. Is he a representative of the Democratic party?—A. He is a Democrat, sir.

Q. Is he a competent man?—A. I think he is competent to fill the place of commissioner.

Q. Do you know William A. Smith?—A. Yes, sir.

Q. What are his politics?—A. I think he is a Democrat, although he voted for some of the Republican officers in this parish—some of the candidates for parochial offices.

Q. Was he a supporter of Mr. Acklen for Congress?—A. I presume he was, but I do not know it.

Q. Is he a competent man for commissioner?—A. Well, he is not a very active man, sir; I think he is a little slow. He does not write very well. He is a very honest gentleman and stands very high in the community. His education is not the very best.

Q. He reads well?—A. I think he does; yes, sir.

Q. He reads well enough to discover the name of Mr. Acklen on the Republican ticket by examining it?—A. Yes, sir; no doubt of that.

Q. Do you know Mr. Amadée Roux?—A. Yes, sir.

Q. Was he a competent commissioner?—A. I believe so.

Q. Was he a Democrat?—A. Yes, sir; I believe so.

Q. Do you think these different gentlemen whom I have named, and whom you say you know, would have allowed anything wrong to occur in any way during the counting of the votes?—A. I do not think they would, sir; not one of them.

Q. Do you think they would have been diligent in examining the ballots to see that nothing wrong occurred in the counting?—A. Well, I presume they would have been. I do not know what they actually did do, except at this poll here.

Q. Do you think that they would certify and swear to a return without knowing of their own knowledge that it was correct?—A. I do not think they would certify and swear to a return unless they believed it to be correct.

DISTRIBUTION OF REPUBLICAN TICKETS WITH CONTESTANT'S NAME ON THEM.

Contestant attempts to strengthen his claim that there was a mistake in the official count by trying to prove that Republican tickets were printed and distributed with contestant's name on them.

That such tickets were printed is proven; that they were carried into the parish in question is also proven; and that they were attempted to be gotten into the hands of the voters and the voters to be cheated by means of them is also quite clear, but it is equally clear that they were not distributed to the voters to any considerable extent.

This fraud on the voters was attempted to be perpetrated by W. W. Wharton, and, as will be seen by the subjoined testimony, he brought the tickets from New Orleans in bulk, and distributed them in bulk to the persons named, for use at the different polls. That they were not distributed to the voters, and that they were in some cases destroyed, appears from testimony below. It is shown by Wharton (witness for contestant) that he delivered the tickets for distribution at polls 1 and 2, to Hon. J. S. Davidson, to George Deslonde, to James H. Tate, and a man (name not known) sent by Davidson for tickets. (See Wharton's evidence, pp. 122 and 126.)

Q. To whom did you give tickets to distribute in the first ward?—A. Deslonde, Davidson, Tate, and some one else who was up here with them. A strong friend of mine down there came up for some. I forget his name now. I sent some by Mr. Tate and by some one else that Davidson sent here from Bayou Goula to get some tickets.

Q. Was not that man's name Handy?—A. I forget his name now.

This is all the evidence the contestant offers as to distribution of tickets at these two polls. Davidson testifies as follows (pp. 248 and 249):

Q. Did you take the tickets to your ward?—A. I took them down there.

Q. Where did you get these tickets, and of whom?—A. I got the tickets from Major Wharton—well, about sunset, at his room. I went to get tickets on Monday, the day previous to the election, and we were detained there all day, because the tickets were not ready, and about sunset we went into the room where the tickets was. Mr. Wharton told us the tickets were ready. He had the tickets all bundled up in bundles. He asked me if I would distribute some Republican tickets with Mr. Acklen's name on them. I told him no. He said, "Why?" I said, because I was a man; that is, when I wanted to beat a man, I wanted to be honest about it. That if I wanted to beat Mr. Darrall I wanted to be honest about it. I wanted to take one stand. He insisted on me to take the tickets down. I told him no, I did not want to distribute them or to have anything to do with them. After he insisted on me to take them I took the tickets. He had the tickets all bundled up. I asked him how many tickets there were there. He said two thousand, and then I said, "Give them to me," and he gave them to me; and after looking into them, I think, perhaps that there were two thousand. I did not know how many of these Acklen tickets there were in there. I did not know how many there might be among them; consequently I told him to give me two thousand five hundred tickets, and he gave them to me and Mr. Whitaker, another gentleman who was along with me, and was one of the marshals to take charge of the box. I came out and stated to him—I told him of what proposition that had been made to me; that is, that the senator asked me to distribute these tickets in this manner, and I told him I didn't think it was right. He said, "Come down to my room, and we will scrutinize these tickets," and we went down to his room about 7 or half past 7, on the Bayou Goula, and me and Mr. Whitaker stopped there, and there we examined these tickets. In examining these tickets I found that there was about a thousand of the Republican tickets with Mr. Acklen's name on them. I took them out, me and Mr. Whitaker, and put them aside. We put the balance of the tickets into the box, and he took them down to his room, about a couple of acres away from where I reside.

Q. The other tickets that were left in the box, what kind of tickets were they that you put in the box; the fifteen hundred that Mr. Whitaker took?—A. The straight Republican tickets.

Q. What became of those tickets then? When did you begin distributing them?—A. In the morning, just after the polls opened.

Q. Did you distribute any of the tickets with Mr. Acklen's name?—A. No, sir; I had them at my room.

Q. Were they taken out of your room?—A. No, sir.

Q. What finally became of those tickets?—A. I burned them up.

Q. Did you burn up all of them?—A. I burned all of them that came down with me; all of the thousand tickets.

Q. Who distributed tickets on the morning of the election beside yourself and Mr. Whitaker, or did you distribute all the tickets?—A. I distributed the tickets to men there who gave them out to other men. I distributed them to men who could read and write.

Q. How was there more than one poll in that ward, Mr. Davidson?—A. There were two.

Q. What was the other poll in the ward; do you know?—A. No. 1; the one that I have been referring to is No. 2.

Q. Where was the poll No. 1 at?—A. At Adams's plantation.

Q. Did you also send the tickets, the Republican tickets, to that poll?—A. I took them there; yes, sir.

Q. Did you take them there?—A. I did.

Q. In what hands did you place them for distribution?—A. In Mr. E. Verrett's.

Q. What kind of tickets did you give Mr. Verrett for distribution at that poll?—A. The straight Republican ticket.

Q. Do you remember about the number that you gave him?—A. I gave him five hundred.

Q. Did you send him any more tickets than five hundred that you gave him for that poll?—A. Yes, sir. I wrote to Major Wharton for them.

Q. How many of these tickets did you send him?—A. I sent him five hundred more by an open note the next morning. The gentleman who I sent with them brought them, and on examining them I found they were printed blank for member of Congress. I took them down then and I gave them to Mr. Verrett, and told him not to distribute more than one ticket at a time of the straight tickets, so if they had enough he would not have to use these blank tickets; but whether he used any of them or not I am not able to say.

Q. Was Mr. Verrett an officer at that poll?—A. Yes; United States supervisor.

Q. Did you tell him about these Acklen tickets being in existence?—A. Yes, sir.

Q. Did you give him any warning in regard to them?—A. I did.

Q. Please state it.—A. I told him there was such tickets, Republican tickets with Acklen's name on it, but I was satisfied there was none of them in that package I gave him, and to be particular about distributing them, because there might not be enough. I told him to be careful about distributing them. I reiterated to him that if there was not enough of these straight Republican tickets he would have to use these blanks.

Q. Then after giving Mr. Verrett three hundred of the straight Republican tickets you had about one thousand left for your poll?—A. Yes, sir.

Q. Were these enough for distribution at this poll?—A. More than enough.

Deslonde testifies (p. 201) that he did not receive any of these bogus tickets from Wharton and distributed none.

Tate (p. 57) testifies that he saw tickets at poll 1 with no name on for Congress. These were the tickets taken by Davidson in the second package and given Verrett, 80 of which blank tickets were shown to have been voted by the returns of the commissioners at that poll. This appears in the count upon which Darrall's certificate was issued.

The evidence is conclusive that none of the bogus tickets with Acklen's name on were in circulation or voted at these two polls, and yet it is claimed by the contestant that according to his recount there were voted at poll 1, 106 of the spurious Republican tickets, and at poll 2, 226, which were not-discovered in making the official count. And this preposterous claim is set up in face of the above facts, as well as of the extreme care with which it is shown by the evidence of both Democratic and Republican officers of election the ballots at these polls were counted.

Also let it be noticed that of all the witnesses who were examined regarding these two polls not one is found to say he voted one of the tickets with Acklen's name on.

Wharton further says (p. 196) that he gave the tickets for poll 7 to Carville.

Hon. J. C. Carville, a member of the legislature, testifies fully on this point (p. 196):

- Q. Did you distribute the Republican tickets in your ward?—A. I did.
 Q. Did you take all the Republican tickets to your ward and distribute them?—A. I took all to my ward and distributed them.
 Q. To no other ward except your own?—A. None, only my own ward.
 Q. What ward is that?—A. Ward No. 5, poll 7.
 Q. Were the tickets thus distributed the straight Republican ticket with the name of the regular nominee for Congress upon them?—A. They were.
 Q. What was the color of the ticket?—A. We had two; one was with a red face, and we had another ticket with a black back or a glaze back inclined to be black.
 Q. Were there any tickets distributed at your poll or in circulation, and voted by Republicans, except the straight Republican ticket having the name of the regular nominee for Congress on it?—A. I knew of none, or none distributed.
 Q. And you distributed all the tickets yourself?—A. Yes, sir.

Various witnesses are examined by contestant, who say vaguely they sent tickets with Acklen's name on to this poll, but it is not shown that any of such tickets were taken there. Neither is it attempted to be proven that a single one of these bogus tickets, either with Acklen's name on or blank, were voted, or even seen at that poll.

In face of these facts, contestant claims by his recount that 21 of the Acklen tickets and 73 blanks were voted which were not discovered in making the official count.

The evidence above given is conclusive, and not contradicted, that none of the tickets with Acklen's name on were distributed at either of these three polls. Verrett distributed, as was said, blank tickets at poll 1, and some of them are shown by the official count to have been voted.

The fact that the official count discloses that the officers of election discovered these blank tickets in making that official count is conclusive that the officers of election carefully examined the tickets in making the count, and leaves no room for doubt that if Republican tickets had been voted with Acklen's name on them, they would have been discovered.

Now, in the first place, we have here the spectacle of the contestant seeking a seat in the House by reason of a fraud attempted to be perpetrated upon the voters of that parish. This fraud thus attempted to be perpetrated upon the voters of that parish is what is relied upon by the contestant to secure this seat. His evidence is largely directed to proving that this fraud was successfully perpetrated by getting the voters to deposit these spurious tickets. The contestant's case is therefore one not to be looked upon with favor.

But the evidence shows that the perpetration of this fraud was not accomplished. The officers of election were selected from both parties, as the law requires; bogus tickets were not distributed or voted.

In addition to this the testimony proves that the existence of these tickets was known before the election.

Hon. George Wailes, Democratic candidate for senate, testifies (p. 117):

- Q. Did the leading Democrats of the parish know that Mr. Acklen's name was on the regular Republican ticket for Congress?—A. I think they did, sir.
 Q. Then it was generally known by the party in that parish that his name was printed on the regular Republican ticket?—A. Well, it was generally known that his name was on the ticket that we considered as the regular Republican ticket. We knew that there were Republican tickets upon which his name did not appear.

George Buttrick (p. 238) testifies:

- Q. Did you see any Republican ticket on the day of election that did not have the name of the Republican nominee upon it?—A. No, sir.
 Q. Did you see any previous to the day of election?—A. I did. I saw a ticket the day previous to the election.

Q. What kind of a ticket was that? Did it resemble the regular Republican ticket?—
A. Exactly; except that Mr. Acklen's name was in place of Mr. Darrall's.

Q. Where did you see this Republican ticket with Acklen's name?—A. The day before the election I saw it in the office of the Iberville South, a Democratic newspaper.

Q. Did you see more than the one ticket at any time before the election or on the day of election?—A. That is the only one that I seen.

As has already appeared in the evidence before quoted, Davidson, Carville, and others knew of the existence of these tickets.

Then there is the fact that Democrats and Republicans were officers at these polls, selected upon recommendation of the parties respectively, as above shown; then there is the additional fact that the official count was carefully made. Now, in the face of the fact that these tickets were known to be in existence; that they were gotten up for the purpose of defeating Darrall; that both Democrats and Republicans knew of all this, we are asked to believe that a large number of them were voted, and yet no one of these Democratic officials discovered, in making the count, that the name of Acklen was on them instead of that of Darrall.

We are asked to believe that in making the official count mistakes were made at these five polling-places which we have been considering, such as are indicated by the two columns following.

Official count, page 280:

For the Forty-fifth Congress, third Congressional district.

Number of polls.	C. B. Darrall.	J. H. Acklen.
	No. of votes.	No. of votes.
1	218	44
2	894	115
3	207	63
4	301	156
5	187	58
Total	1,307	436

Recount (p. 13) of same polls:

Poll.	Acklen.	Darrall.
	No. of votes.	No. of votes.
1	150	139
2	340	88
3	158	79
4	228	99
5	79	96
Total	955	499

That is to say (taking for example poll 1), we are asked to believe that these Democratic officials stood by and saw tickets counted for Darrall to the number of 218, when there were only 150 that had his name on them, and that there were 139 with the name of Acklen on them, when only 44 were counted for him. This is simply preposterous. Such a mistake, in the nature of things, could not have occurred; for it is admitting that of 1,307 votes counted for Darrall 808 of them were not for him, and no one noticed it, although Democrats and Republicans were both counting and watching.

In the language of one of the witnesses, this could not have occurred "unless we were blind."

As to the bogus tickets being in general circulation at polls 5 and the evidence is by no means clear, but there is no evidence to show that more than one was voted, while the officers of election swear positively that these bogus tickets were not in the boxes when they counted the ballots on the day of election. The contestant does, however, produce evidence to prove that the contestee had some enemies in his own party, in Iberville Parish, who endeavored to defeat him. This is admitted by contestee, and the committee are satisfied that such was the case, for an examination of the official returns from that parish shows that Darrall, the contestee, ran behind his ticket 213 votes, and the contestant ahead of his ticket 113, making a difference against the sitting member in that parish of 326 votes, which sufficiently accounts for the opposition in said parish, and all this was taken into the account when both the Kellogg and Nichols returning-boards gave the sitting member his certificate of election. If 800 bogus votes were cast out, a total of 1,307, is it not reasonable to suppose that 15 or 20 of the might have been found to testify to that fact? and this would be the strongest and best evidence the contestant could produce; but after all the effort that has been made in this direction but one of these 800 could be found.

The committee therefore are compelled to believe that these tickets were not in the boxes when the votes were counted, on the day of election. Wharton's testimony referred to by contestant is to the effect that he knew on the day of the election that the count was incorrect; now if this be true, why did not he or contestant have a recount at once or within the time prescribed by law for preserving the ballots? Why wait until the time had expired fixed by law for keeping the ballot-boxes? If it be claimed that the government of Louisiana was then in the hands of his political enemies, and that that was the reason, the committee do not understand why (if that was the reason) a recount was not asked for when the Nichols government came into power, and when a new canvass by a new returning-board was had. But this recount was not asked for until it was discovered that this new returning-board arrived at substantially the same conclusion as the old one, and the Democratic governor gave the certificate of election to the same man that the Republican governor had. And it must not be forgotten that this Democratic governor never did give a certificate to the contestant in this case. Although he was at his office for six months after this recount he issued no certificate, and none was issued to contestant until in the absence of the governor, and only three days before the meeting of Congress, the lieutenant-governor issues the document under and by virtue of which contestant claims. This, to say the least, has a suspicious look.

SAINT MARTIN'S PARISH.

Lieutenant-Governor Wiltz omits Saint Martin's Parish in his certificate to the contestant.

There are no reasons for not counting this parish. The contestant furnishes no evidence whatever to show unfairness in the election fraud in the returns. The evidence, both of Democrats and Republicans in the record, is that the election was fair.

The Nichols returning-board returned the parish for Darrall 1,095, Acklen 1,028.

The contestant files certificate of the clerk of court, that the records of his office show the vote as, Darrall 1,095, Acklen 1,028 (p. 16). 

the unconditional agreement of the parties made before this committee, which is hereafter quoted, gives Darrall 1,095; Acklen 1,028.

In a contest for the parish offices, the Nichols' returning-board adopted, July 10, 1877, a resolution, found on p. 13, that they were not able to decide who had been elected to those offices. This in no way applies to the vote of Saint Martin's for member of Congress, as the same board had already canvassed and declared the Congressional vote.

LA FOURCHE PARISH.

There appear in the record various returns and much evidence regarding La Fourche.

In a contest as to parish officers the matter went to the supreme court of the State. The district judge had decided the vote for sheriff as Democratic 2,001, Republican 2,017, a Republican majority of 16 (p. 11). Counting all the polls, and allowing the votes that would have been polled at ward 8, and deducting illegal votes, the "chief justice decides vote for sheriff as Democratic 2,025, Republican 1,983, a Democratic majority of 42. (See p. 12.)

Lieutenant-Governor Wiltz in his certificate to contestant gives the vote of La Fourche as (p. 2):

Acklen	2,086
Darrall	2,015

Acklen's majority 71

And we have allowed that to stand as the vote in our computation.

The contestant has filed what is termed a certificate of election from Louis A. Wiltz, lieutenant-governor of Louisiana. This certificate was issued October 12, 1877; was received and referred to this committee by the House October 16, 1877. It purports to be based upon the following:

Consolidated statement of the aggregate vote of the parishes constituting the third Congressional district of the State of Louisiana at an election held on the 7th day of November, 1876, under a writ of election dated September 16, 1876, for Representatives in the Forty-fifth Congress of the United States, together with the recount of the vote of the parish of Iberville and the report of the board of canvassers in relation to the parish of Saint Martin's, in the third Congressional district.



Names of parishes.

	C. B. Darrall.	Joseph H. Acklen.
	Votes.	Votes.
Ascension	2,059	1,215
Assumption	1,692	1,679
Terre Bonne	1,966	1,898
Saint Mary	2,385	1,428
Iberia	1,455	1,242
Fayette	661	1,187
Orleans	228	955
Acadian	91	1,201
Stamerson	69	225
Fourche	2,015	2,086
Saint Martin's		
Iberville		
Total	12,621	12,666

This it will be observed, embraces the five polls that were rejected by the supervisors and the one poll that was rejected by the Kellogg returning-board.

It will further be observed that it entirely omits the parishes of Saint Martin's and Iberville.

This statement of the vote by parishes, as given above, is identical with the count of the Nicholas returning-board, only that Saint Martin's and Iberville are omitted.

AGREEMENT AS TO SAINT MARTIN'S PARISH.

By an agreement found in the Record, p. 172, the parties to this contest decide to count Saint Martin's for Darrall, 1,095; for Acklen, 1,027

JOSEPH H. ACKLEN }
 vs. } Before the Committee on Elections, House of Representatives
 CHESTER B. DARRALL. }

It is hereby stipulated and agreed by and between the parties contestant and contestee that, in the consideration and determination of the above-entitled case, the committee shall allow to the contestant ten hundred and twenty-seven (1,027) vote as having been lawfully cast, counted, and returned for him in the parish of Saint Martin's, in the State of Louisiana, and to the contestee ten hundred and ninety-five (1,095) votes as having been lawfully cast, counted, and returned for him in said parish and that said parties respectively lawfully received, and are entitled to the benefit of the number of votes aforesaid on account of said parish.

J. H. ACKLEN.
 C. B. DARRALL.

If we then take the vote in the balance of the district as claimed by the contestant, and which includes all the rejected polls, and add the parish of Saint Martin's, as it was agreed it should be counted, the vote will be as follows:

Darrall, as per table.....	12,621	
Darrall, Saint Martin's (above).....	1,095	
		13,71
Acklen, as per table.....	12,666	
Acklen (Saint Martin's).....	1,028	
		13,69

Giving Darrall a majority, exclusive of all votes from Iberville, of..... 2

From the parish of Iberville, we have in the Record, first, the official count and return, made by the officers of election at the polls of the actual votes as cast on the day of election. This official count and return, as made and sworn to by the officers of election of both parties and the compilation by the Kellogg and the Nicholls returning-boards are the same; that is, Darrall, 2,070; Acklen, 1,078. Next we have a recount of the ballots found in the boxes of this parish, which recount was made March 6, 1877.

At this recount all of the ballot-boxes of Iberville Parish, eleven in number, were opened, and the ballots found in them counted.

The recount of six of these boxes does not vary materially from the official count. The said six boxes were from polls 3, 4, 8, 9, 10, and 11 and the evidence of contestant's witnesses shows that these boxes were carefully sealed at the polls, and the seals were found intact when they were recounted.

The official count and recount of these six boxes was as follows:

	Official count.		Recount.	
	Darrall.	Acklen.	Darrall.	Acklen.
Poll 3.....	176	223	189	
Poll 4.....	128	83	105	
Poll 8.....	54	58	55	
Poll 9.....	121	251	122	
Poll 10.....	183	33	193	
Poll 11.....	91	44	90	
Total.....	763	612	754	64

The official count and recount of these six boxes only shows a difference of seven votes, which difference is so small that it is not material, and was no doubt owing to the manner and hurry in which the votes were counted at the polls.

Darrall's majority in six polls (official count)..... 121
Darrall's majority in six polls (recount)..... 114

If it be admitted that the recount of the ballots in these six boxes is the most correct, and that vote be added to the total vote of each party in the district as claimed by the contestant, we have :

Darrall, as per table..... 13, 716
Darrall, six boxes, Iberville..... 754
14, 470
Acklen, as per table..... 13, 693
Acklen, six boxes, Iberville..... 640
14, 333

A majority for Darrall of 137

Thus it is shown that, taking all that the contestant claims in the balance of the district, and taking his recount of these six uncontested boxes in Iberville, the contestee still has a majority of 137 votes.

The other five boxes in this parish, that is, boxes from polls 1, 2, 5, 6, and 7, show a most surprising difference between the official count as made at the polls and the recount made four months afterward.

The evidence of contestant's witnesses (which has been quoted) shows that some of these boxes were not properly sealed, and others were found with the seals broken at the recount.

The official count and recount of these five contested boxes was as follows :

	Official count.		Recount.		
	Darrall.	Acklen.	Darrall.	Acklen.	Blank.
Poll 1.....	218	44	139	150	55
Poll 2.....	394	115	86	340	90
Poll 5.....	207	63	79	158	32
Poll 6.....	301	156	99	228	135
Poll 7.....	187	58	96	79	73
Total.....	1, 307	436	499	955	385

This recount was ordered to be made by James Crowell, parish judge of Iberville, on an application made to him by contestant in an oral argument, as contestant says in his brief. It was had against the protest of the contestee's representative, and the judge gave his authority for so ordering the recount, section 123 Revised Statutes of the United States. Neither that section or any other law of the United States or of the State of Louisiana authorizes this recount.

The recount was made by experts who were appointed by the judge. They agree as to the number of ballots then found in these five boxes for each party, but one of the experts testifies distinctly that the seals of some of the boxes were broken, and that the tickets in the boxes (especially box from poll 2) did not have the appearance of having been handled and folded by the voters; that the tickets having this appearance were all the black-back Republican ticket with Acklen's name on. See testimony of Jolley, page 246 :

Q. Did you notice carefully the appearance of the tickets as taken from those boxes when the recount was made?—A. Yes, sir.

Q. Will you please state the appearance of a portion of them or any of them? Did they look like tickets that had been regularly voted?—A. Some of them looked like—well, now, I will tell you how they looked. Some of them looked like they had been voted like an ordinary ticket and others looked like they had not been voted—that is, they did not have the appearance of having been doubled up like a voted ticket.

Q. Were these tickets that had the appearance of not having been voted Republican tickets?—A. Republican tickets.

Q. Were they the black-back tickets?—A. Yes, sir.

Q. Did any of the Democratic tickets have that appearance?—A. No, sir.

Q. Were there more than one-third of Republican tickets in the box?—A. Some boxes there was three colors.

Q. Did any of the tickets have this appearance of not having been voted except the black-back tickets?—A. No, sir. In some of the boxes when we had opened the box we would turn up the box, and in the back you would see tickets like ordinary tickets crossways, faces up, like they had been thrown in there. Then we would go on further and we would find on the back tickets with a crease right through the back where they had been folded. I don't know the exact number, but they were quite thick, because in taking them from the box I would reach over and take these tickets that was folded in the center by bunches.

Q. Was it more than one?—A. Fifteen or twenty. Well, they were put together, the tickets. The tickets were taken from the box, a number of them together, and the tickets were invariably the same kind, black-back Republican tickets. In counting the tickets I frequently called Mr. John H. Shank's attention to it, showed them to him that they were in bulk when I took them from the box. They looked new. I also called Mr. Acklen's attention to it.

Q. You say these tickets, folded in bunches longways and crosswise, coming out, were invariably the black-back Republican tickets?—A. Yes, sir.

Q. There were none other folded in that manner and had that appearance?—A. No, sir; not that I remember.

Q. Whose name was on these tickets having that appearance, for Congress, or was any name on them?—A. Some had J. H. Acklen's; some did not have anybody's on.

Q. Was the Republican nominee's name on any of these tickets, to your recollection?—A. No, sir. I would like to state to that. I would take these tickets by the back and tell what ticket they were without looking at the face.

Poll 2 was the only one where a string was used (p. 246):

Q. What boxes, by number, did you notice contained tickets which you state were folded in the peculiar way?—A. I don't remember. There was one box. I can't tell you. I don't know the number. It was the box that had the string through the tickets. The tickets were on a string.

Q. How were these tickets put on that string?—A. They had a hole run through the ticket and the string through the hole.

Q. Was that string tied or secured in any way?—A. I cut it with a knife.

And as to his protesting against the recount he testifies as follows (p. 177):

And having been informed by said Acklen and Hon. James Crowell that they intended to proceed and take the evidence, and deponent, not knowing what to do, appeared before James Crowell, the judge taking said evidence, and objected, on behalf of said Darrall, to the taking of the evidence, on the ground that sufficient notice had not been given, and that the judge had no authority to recount the ballots; that his objections were overruled by the judge, and that the ballot-boxes, some of which had every appearance of having been tampered with, were opened, and the ballots recounted.

This evidence of one of the sworn experts appointed by the judge, and of the one who handled most of the tickets, is sufficient to invalidate the whole proceedings.

It is seen, therefore, that in no way can the contestant be declared entitled to the seat except by giving him the votes of these five boxes, in accordance with the recount had four months after the election.

It is then to be determined whether these five boxes shall be counted according to the official count made at the polls or according to the recount.

We have no hesitation in deciding that the official count of these five boxes is the only one that is entitled to be received. Could any evidence on a question in dispute be stronger than what has been cited?

in this case? One thing seems to be certain, and conceded by the lieutenant-governor, who gave the contestant his certificate, and that is that Mr. Acklen is not entitled to have the votes cast at polls 1, 2, 5, 6, and 7 counted for him, because in making his certificate he makes no count of Iberville Parish.

There is no precedent for allowing a recount of this kind to overcome and set aside an official count regularly made in accordance with the forms of law, and this committee, it is presumed, does not intend to depart from all precedents and establish one so widely at variance with all decisions in similar cases heretofore made, and which would certainly be mischievous in its consequences.

By no possibility can the contestant in this case be seated, unless it be determined to reject the decisions of both the Kellogg and Nicholls returning-boards, and to declare that the Democratic and Republican officers who held the election at these five polls in Iberville Parish were either notoriously ignorant or wickedly conspired to make a false return; for no person who has any knowledge of the manner of conducting an election can for one moment believe that men of ordinary ability and honesty could preside at and count the votes of an election and not know that bogus and blank tickets were voted, particularly when these bogus tickets amounted to several hundreds, and were a majority of the votes cast.

In conclusion, to sum up this case, we will take the vote of the balance of the district, exclusive of Saint Martin's and Iberville, just as the contestant claims it in his certificate issued to him by Lieutenant-Governor Wiltz, and which is certified to by the secretary of state as a correct record of the votes of the various parishes named, and which is also the vote of those parishes as returned by the Nicholls returning-board. It is as follows:

Names of parishes.	C. B. Darrall.	Joseph H. Acklen.
	Votes.	Votes.
Ascension	2,059	1,215
Assumption	1,682	1,679
Terre Bonne	1,966	1,398
Saint Mary	2,385	1,423
Iberia	1,455	1,242
La Fayette	661	1,157
Vermillion	228	955
Calcasieu	91	1,291
Cameron	69	225
La Fourche	2,015	2,086
Saint Martin's		
Iberville		
	12,621	12,666

To this vote we will add the vote of the parish of Saint Martin's, as it was returned by the Nicholls returning-board when they made the return for members of Congress, as it is certified to by the clerk of the court of that parish in his certificate, placed in the record by the con-

testant, and as it was agreed it should be counted by the parties themselves before this committee. That is—

Darrall, as above table	12,621
Add Saint Martin's.....	1,095
	13,716
Acklen, as above table.....	12,666
Add Saint Martin's.....	1,028
	13,694

This, then, exclusive of Iberville, and taking the balance of the district just as claimed by the contestant, leaves Darrall a majority of 22 votes.

To this vote of the district we think the law, the evidence, and the equities of the case demand there should be added the vote of Iberville Parish, according to official returns of the officers of election, according to the Kellogg returning-board, and according to the Nicholls returning-board; they all agree.

We then have—

Darrall, as above.....	13,716
Darrall (add Iberville).....	2,070
	15,786
Acklen, as above	13,694
Acklen (add Iberville).....	1,078
	14,772
A majority for Darrall of	1,014

This ignores the recount in Iberville entirely, and we think is just; but the vote of six out of the eleven polls in Iberville is uncontested. These are polls 3, 4, 8, 9, 10, and 11; to these we add poll 1, which the majority in their report admit should be counted according to the official returns. The vote of these seven uncontested polls is as follows:

Darrall	941
Acklen.....	798

If this vote be added to the vote of the balance of the district, exclusive of Iberville, we have—

Darrall (exclusive Iberville).....	13,716
Darrall (add 7 uncontested polls).....	941
	14,657
Acklen (exclusive Iberville).....	13,694
Acklen (add 7 uncontested polls).....	798
	14,492

a majority for Darrall, according to contestant's own figures, in the uncontested part of the district, of 165 votes.

But the majority having conceded that poll 1 shall be counted according to the official count because the seals of the boxes were broken, by which it is indicated that the boxes had been tampered with, the same must apply to poll 6, where the seals were also broken.

If poll 1 is not to be taken according to the recount, none of these polls should be counted according to that recount, for all the boxes were kept in the same place; and if the evidence is such that the security of the boxes is not sufficiently proven as to one of them, it clearly follows that it is not sufficient as to any of them.

If the other four polls, Nos. 1, 2, 5, and 7, of Iberville Parish, are not

counted according to the official returns and according to the returns of both of the returning-boards, then surely they will not be counted according to this recount made four months after the election.

With the evidence given we think this cannot in justice and right be done.

With the admission of the majority that poll 1 should be counted according to the official count and not the recount, and with an unbroken line of precedents that no recount has ever been allowed to overcome an official count in any contest for a seat in the House of Representatives, we claim that the official count should stand, or that these four polls should be rejected and not counted for either party.

In either event the right of the contestee to the seat is clear.

In view, then, of the foregoing, we recommend the adoption of the following :

Resolved, That Chester B. Darrall was duly elected and is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third Congressional district of the State of Louisiana.

Resolved, That Joseph H. Acklen is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third Congressional district of the State of Louisiana.

H. PRICE.

Mr. THORNBURGH, on behalf of a minority of the Committee of Elections, submitted the following

REPORT :

A minority of the Committee of Elections, to whom was referred the contested-election case of Joseph H. Acklen vs. Chester B. Darrall, from the third district of Louisiana, submit their views as follows :

There have been two canvasses of the votes for this district. The first under the Packard government, which gave Darrall a majority of 2,093 votes, and again under the Nicholls government, which gave Darrall also a majority, but reduced to 1,094 votes. The canvass of the Nicholls government is based upon a count of all the parishes and polls as returned ; hence we take this canvass as the best basis for the investigation of the case.

The only difference of opinion existing in the committee is limited to poll No. 17, La Fourche Parish, and six precincts in Iberville Parish. And it is admitted by the entire committee that all the remaining parishes and voting-precincts shall be counted as canvassed by the Nicholls returning-board. And first as to precinct No. 17, La Fourche Parish.

It is shown by the evidence of M. W. Billier (Record, p. 132) that the place for holding the election was changed from R. H. Allen's warehouse, where notice had been given the election would be held, to the negro quarters on the same plantation, which was about a mile distant from the warehouse. This change was made without legal authority, and without giving notice of the same. This change lost to Acklen some 15 to 18 votes, because, as the witness Ledet states it, the Democratic voters were "disgusted" at the change and would not go to the negro quarters to vote. We quote his testimony on this question, from page 75 of the record :

Q. What number of votes were lost to J. H. Acklen by the failure to place poll No. 17 where it was ordered to be held, at the Allen warehouse, and which was really held back in some negro quarters about three miles from the road?—A. Well, the commissioner at that poll had instructions to hold the election on the road-side at the warehouse, and he disobeyed orders and went back there. He told me himself afterward that there were about fifteen or eighteen Democrats that would not vote on account of the poll being there, because Mr. R. H. Allen, who was the owner of the place, protested against holding the election there and disgusted those men from voting there. That information I hold from the commissioner himself. I know myself that on that place there were at least fifteen or eighteen white men working there nearly all the year round.

Darrall received 86 votes at this precinct, all the votes that were polled. By the evidence, Acklen would have received 15 to 18 votes if the election had been held at the warehouse. This would have left Darrall more than 60 majority at this precinct. But, as the change of place of voting was without legal authority, and done, perhaps, to seek an advantage for Darrall and others on the Republican ticket, we agree with the majority to throw out this entire poll, thereby depriving Darrall of 86 votes, when a full vote would have left him more than 60 majority; and we deduct from Darrall's majority 86 votes.

This leaves us the parish of Iberville.

It is agreed by the committee, both the majority and minority, that polls Nos. 1, 8, 9, 10, and 11 shall stand as counted by the Nicholls returning-board.

These polls gave Darrall.....	677
These polls gave Acklen.....	430

This narrows the discussion to polls Nos. 2, 3, 4, 5, 6, and 7. The testimony is quoted in the majority report, and also in the report submitted by Mr. Price, of the committee, and is therefore not repeated here. It establishes, we think, the following facts in regard to each and all of these last-named polls:

That Wharton, a Republican candidate for the State senate, and others, conspired to defeat Darrall by the use of spurious Republican tickets, intending to procure such of his friends as he could control to vote and distribute on election-day these spurious tickets, and to procure thereby other Republican voters to vote said spurious tickets without their knowledge. And here we will describe this ticket as shown by the evidence. It is headed, "Republican ticket, Iberville Parish." Then follow the names of 48 persons, with the offices for which they were candidates, giving in each case the name of the Republican candidate for that office (see Record, pp. 72 and 73). This ticket was about nine inches long, and to distinguish it from other tickets was printed on paper with a glazed back, and nearly black in color. The spurious tickets were exactly like those just described, except that Acklen's name was inserted for Darrall's, or the whole line, "For member of Congress, third district, Chester B. Darrall," left out, making it a blank as to member of Congress.

The contestant claims that these spurious tickets were voted at these polls. In other words, that this trick and fraud was successful, and that the officers of election, not knowing such tickets were being voted, did not sufficiently scrutinize the tickets to detect the fact that they were not what they purported to be, to wit, straight Republican tickets, and that they so counted them, giving Darrall the benefit of all the spurious tickets. We think that the question whether or not the tickets were sufficiently scrutinized to detect this fraud, if it was successfully consummated, by the officers of the election when they made the official count is conflicting and leaves the matter in doubt. Here we might

possibly stop and assume that the official count must stand because the evidence only casts a grave doubt as to its correctness; but as we think there is such doubt and conflict of evidence concerning the correctness of the official count by the officers of the election, we have determined to give the contestant, Mr. Acklen, the benefit of the doubt and the conflict in the testimony, and by so doing it becomes our duty to carefully examine all the testimony, and see whether from it we can find out what the true vote at these polls was. The contestant relies on what is called a recount of the ballots, a count made of such ballots as were found in the boxes, in the following month of March, *four* months after the election, to establish both the facts that the first count was incorrect, and, second, that the last count shows the true vote at these polls in dispute. We insist that this count (the last or recount) cannot be relied on for either purpose, and that it is far more unreliable and uncertain than the official or first count, and that it is utterly incredible that it can show the true vote. And here we will cite some of the testimony bearing on this point.

1st. Some of the boxes were not delivered by the officers of the election to the clerk of the court, but were for a time out of his custody.

The law is as follows:

LAW OF LOUISIANA FOR PRESERVATION OF BALLOTS.

SEC. 13. *Be it further enacted, &c.,* That it shall be the duty of the commissioners of election at each poll or voting-place to keep a list of the names of the persons voting at such poll or voting-place, which list shall be numbered from one to the end; and said list of voters, with their names and numbers as aforesaid, shall be signed and sworn to as correct by the commissioners, immediately on closing of the polls, and before leaving the place, and before opening the box. If no judge or justice of the peace, or other person authorized to administer such oath, be present to do so, it may be administered by any voter. The votes shall be counted by the commissioners at each voting-place immediately after closing the election and without moving the boxes from the place where the votes were received, and the counting must be done in the presence of any by-stander or citizen who may be present. Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box, and deliver it to the clerk of the district court, who shall preserve the same as above required; and in the parish of Orleans the box shall be delivered to the clerk of the first district court for the parish of Orleans, and be kept by him as above directed. (Act 98, 1872, p. 174.)

That this was not complied with is shown by the following evidence: Crowell, clerk of court when election was held (pp. 59, 60):

Q. After the election did you receive all the boxes according to law? Were they delivered by the commissioners?—A. I received the chief part of them from the commissioners. I received two or three from the clerk of the registrar here, I believe. By mistake they delivered them at his office instead of here.

Here it will be observed that some of these boxes, but which of them we are not able to ascertain from the evidence, were in the hands of unauthorized persons. As to how long they were thus out of the proper custody, and what occurred to them while thus out of the proper custody, the evidence is silent.

2d. We are satisfied from the evidence that these boxes did not contain the ballots that were cast at the polls on the day of the election, but that they had been tampered with, and other ballots substituted. While we admit that the proof is clearer and more certain as to the external evidences of the breaking of the seals and tearing of paper as to some of the boxes than as to others, yet we are satisfied that the evidence taken together, including the contents of the boxes, shows con-

clusively that this recount is wholly unreliable and worthless for any purpose.

3d. It will be seen by the statute above quoted that, after the official count, "the ballots counted shall be put back into the box and be preserved until after the next term of the criminal or district court, as the case may be."

The annexed certificate from the clerk of the district court shows that the first term of court was held January 1, and the said recount was not had till March. After that the clerk is not responsible for safe-keeping of either boxes or ballots, and no law requires that the ballots shall be longer preserved, and it is no offense to tamper with or change the ballots after that time.

Certificate of clerk.—(Page 178.)

STATE OF LOUISIANA,

Parish of Iberville:

CLERK'S OFFICE, FIFTH JUDICIAL DISTRICT COURT.

I, Charles H. Gordon, clerk of the fifth judicial district court of Louisiana, in and for the parish of Iberville, do hereby certify that the first term of said district court for the present year was held in Iberville Parish on Tuesday, the 2d day of January, A. D. 1877, as the first Monday was the 1st and a *dies non*, his honor James L. Cole presiding.

Witness my hand officially and the impress of the seal of said court at the parish of Iberville this 8th day of May, A. D. 1877.

[SEAL.]

C. H. GORDON, *Clerk.*

4th. The testimony shows that two clerks and their deputies were in possession of the boxes after they were deposited in the clerk's office, a public place easy of access.

5th. It is utterly impossible that there could have been over one thousand of these spurious votes cast for Acklen and counted for Darrall without it having been detected by the Republican and Democratic officers of election. The officers of election were divided between the two parties, and were selected by the chairmen of the committees of the two parties respectively. The proof shows that these officers were honest and careful men, and it is absolutely incredible that such mistakes should have been made as is claimed by contestant; especially is this so since it was known at some of these polls that these spurious tickets had been brought into the parish.

6th. As to the condition the boxes were found in, and the excuse given for it, we submit the following extracts from the testimony:

Landry, deputy clerk, Democrat (p. 62):

Q. You see the boxes every day or two?—A. Yes, sir.

Q. If they had been tampered with overnight or at any time, would that fact have been noticed by you, do you think?—A. Yes, sir; so far as I know the boxes have never been tampered with, so far as taking any papers out or adding any papers to them, or anything of that kind.

Q. Is this court-house not very damp?—A. Yes, sir; I say that the dampness of the office would affect the seals of the boxes, if they are sealed with mucilage. Now, I do not know whether it could affect the sealing-wax, but if the dampness does affect the sealing-wax, they would be affected in this office, because this office is very damp.

Q. Have not those boxes been removed several times?—A. They were moved twice to my knowledge.

Q. Is it not possible that some of those papers on the boxes and some of the wax might have been loosened by the moving of those boxes?—A. Yes, sir, on account of the dampness, which might have unglued some of the paper on them. In moving them some of the papers might have dropped off, for all I know. You will find even now that some of them are very loose.

Cross-examined by Mr. JOLLEY:

Q. Those boxes that have the papers broken on them were sealed with wax?—A.

Well, I could not swear to that fact. I could only swear to them as I see them now, that they are sealed with wax. I never examined the boxes to see what they were sealed with when they first came in.

Q. Did you ever examine those boxes before to-day as carefully as you have now since you have been here as deputy clerk?—A. Well, I cannot say that I examined all of them carefully. I examined some of them the other day. The clerk, in order to make more room, moved them the other day and corded them as you see them there, and I remarked that some of them seemed to be loose. I did not pay attention which boxes particularly were loose or not, but I noticed that some of the labels were entirely unglued.

Hon. J. C. Carville says (p. 197 of Record):

We just simply put a piece of paper with mucilage over the top where they put the ballot in, and then over the key-hole another piece of paper with mucilage; did not seal it or put the name on it.

This is in regard to poll 7.

Poll 5 was sealed with wax on top, but nothing was placed over the key-hole.

Talbott, Democratic commissioner, poll 5 (p. 47):

Q. After you finished the count what did you do with the tickets?—A. We placed them in the box and sealed it. I do not think that the opening of the lock was sealed.

7th. As to the impossibility of such mistakes being made as is claimed by contestant, we quote the following from the testimony of Basil Craig (p. 273), a commissioner at poll 2:

Q. Have you heard of the recount of the vote for Congressman, made at the request of Mr. Acklen, at your poll?—A. Yes, sir; I have heard of it.

Q. In counting these tickets, are you sure Mr. Acklen's name was not on any of the Republican tickets?—A. Yes, sir; I am sure of that; his name was not on.

Q. Mr. Craig, it is claimed in this recount that instead of 394 votes Mr. Darrall received only 86 votes at your poll. Could such a mistake have been possible?—A. It is impossible, sir, from the very reason that the tickets were counted too careful by R. Hebert, who was standing just behind me. Him and I looked over the tickets very carefully, and there could not have been possibly such a mistake.

Q. Could it have been possible that instead of 115 votes Mr. Acklen had 340 votes in your box? Could such a mistake have been possible?—A. It is impossible, sir, to my eye-sight.

Q. Is your eye-sight good?—A. Perfectly good, sir.

Q. Could it have been possible, Mr. Craig, that there was 90 of those votes that had no name on for Congress?—A. No, sir; it could not have been possible.

Q. Mr. Craig, how would you account, then, for this difference between the vote as you counted it, which was 394 for Darrall and 115 for Acklen, and the vote as claimed in this recount? How would you explain that?—A. It would be impossible for me to say Mr. Acklen was elected there by the Republican votes, unless we all were blind.

The following will show how carefully the official count was made at poll No. 6, and the impossibility of making such a mistake as the recount would indicate:

Q. Did you distribute any of the black tickets?—A. No, sir.

Q. Who assisted you? Was one of the commissioners scrutinizing these tickets with you—examining them with you?—A. There was no commissioner examining the tickets with me; but one supervisor.

Q. Which one?—A. David Johnson.

Q. Were the tickets and the names on the tickets scrutinized by any other officers except yourself?—A. No, sir; not that I know of.

Q. And you can positively swear that you examined the names on every ticket?—A. Yes, sir; I took them out one by one.

Q. Were there any Republican tickets scratched in the box?—A. Yes, sir.

Q. Did you sign and swear to the returns as correct?—A. Yes, sir.

Q. Were they correct?—A. Yes, sir.

Q. Was Mr. Darrall supported by all the Republicans of your ward?—A. Every one of them.

Q. Did the Wharton element and the Wakefield element all support Darrall in that ward?—A. Yes, sir.

Q. How would you account for the fact, as claimed in this recount of votes, that in-

stead of Darrall having a majority of the votes at your poll, Mr. Acklen had a majority; or how would you explain that?—A. Well, I could not exactly tell how that come out.

Q. Could that have occurred by any mistake that you made?—A. Not at my poll, because we were very careful in counting these votes.

Q. Were you careful in noticing the names on every ticket?—A. Yes, sir; I was very careful in noticing the names.

POLL No. 1.—E. A. Verrett, a supervisor at this poll, testifies that he “carefully observed every ticket and the names on it,” and that he does not think it possible to have made a mistake.

Yet it is claimed by contestant that the election officers made a mistake of 79 in favor of Darrall, giving him that number too many, and a mistake of 116 against Acklen, giving him that many too few. In other words, that by the official count Darrall had 218, Acklen 44; and by the recount, Darrall had 139, Acklen 150.

This evidence and the fact that seals of the boxes were found broken when the recount took place were sufficient to induce the majority of the committee to reject the recount of poll No. 1. This is an admission that the ballot-box of this poll has so much evidence pointing to the fact that it had been tampered with before the recount that the majority could not accept that recount. This, in connection with the evidence in regard to the other disputed polls, a part of which we have quoted above, and the great discrepancies between the two counts, amounting to over one thousand votes, is conclusive to our minds that the recount should not be accepted as to any of these boxes. When it is conceded that one has been tampered with a strong presumption is raised as against the others.

The majority of the committee also refuse to accept the recount of poll No. 7.

At this poll the official vote stood: Darrall, 187; Acklen, 58. By the recount it stood: Darrall, 79; Acklen, 96; showing large discrepancies between the two counts. But because the evidence shows that the box was not sealed according to law, and the officers of the elections did not write their names on the paper placed on the box; that it was only fastened by strips of paper stuck on with mucilage, which were found in bad condition (tried to be explained in the evidence by saying that the office was damp, as above quoted), the majority of the committee declined to adopt the recount, and accepted the original count. But this being conceded as to this box, it is a virtual concession of the unreliability of the recount as to all of these disputed polls.

We have in vain looked for a single precedent for overcoming an official count by a recount, and seating a contestant by reason of such a recount. The rule of law in matters of this kind is well settled.

It is stated by McCrary as follows (McCrary on Elections, section 277):

Where, as is the case in several of the States, the statute provides a mode of preserving the identical ballot cast at an election for the purpose of being used as evidence in case of contest, such statute, and particularly those provisions which provide for the safe-keeping of such ballots, must be followed with great care. The danger that, after the count is made (especially if the vote is very close), the ballots may be tampered with, is so great that no opportunity for such tampering can be permitted. Such ballots, in order to be received in evidence, must have remained in the custody of the proper officer of the law from the time of the original count until they are produced before the proper court or officer, and if it appear they have been handled by unauthorized persons, or that they have been left in an exposed and improper place, they cannot be offered to overcome the official count.

Applying this rule to the evidence in this case, it is clear that the recount cannot be accepted as showing the vote of these polls.

But if the recount were accurate, and it was clearly proven that

ballots were intact, the House cannot, in our judgment, properly give Mr. Acklen the benefit of it, because it is clear, beyond dispute, that his claim rests upon the fact that fraudulent tickets were, against the knowledge and will of the voters, clandestinely procured to be voted, and thereby a fraud was perpetrated upon the voters. He, therefore, is claiming his seat upon a fraud, which the House cannot sanction.

Now, in conclusion, we say that, inasmuch as a doubt has been cast upon the accuracy of the official count of these polls in Iberville Parish, viz, 2, 3, 4, 5, 6, and 7, and as the recount cannot be accepted as indicating the true vote of these polls, it is our judgment that the proper disposition of them is to reject them altogether, because there is no evidence upon which we can implicitly rely as to what the true vote was.

We agree with the majority that poll 17, La Fourche Parish, shall be rejected.

This makes the result as follows :

The parishes other than Iberville—

Darrall	13, 716	
Deduct poll 17, La Fourche Parish	86	
		13, 630
Add his vote in polls Nos. 1, 8, 9, 10, 11, Iberville		677
Darrall's total vote		14, 307
In the parishes other than Iberville—		
Acklen	13, 693	
Add his vote in polls No. 1, 8, 9, 10, 11, Iberville	430	
Acklen's total vote		14, 123
Darrall's majority		184

It will be seen that we reject both counts at poll No. 7, which the majority are willing to count as it was counted officially; but, as it appears from the evidence that the fraudulent tickets were distributed at this poll, and that the official count was loosely and carelessly made (see evidence of Le Blanc, p. 58), we think it safer to reject that poll, as there might have been mistakes made in the manner in which the count was conducted. We consider that these fraudulent tickets were taken to poll No. 1, but it will be found on examining the evidence that David Acklen gave the fraudulent tickets to Verrett and called his attention to the fact of the fraud. It is also shown that Verrett and the other officers of the election, knowing of their existence, made a careful canvass of each ticket voted.

The carefulness of this count is shown by the fact that while Packard received 298 votes, which were counted for him, Darrall, contestee, only received 218 votes. There were only a few scratched tickets, thus showing that the tickets must have been carefully examined by the officers in making the count. (See Dubuclet's evidence, pp. 265-'6.)

In view, then, of the foregoing, we recommend the adoption of the following :

Resolved, That Chester B. Darrall was duly elected and is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third Congressional district of the State of Louisiana.

Resolved, That Joseph H. Acklen is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third Congressional district of the State of Louisiana.

J. M. THORNBURGH.
JOHN T. WAIT.
FRANK HISCOCK.

BENJAMIN DEAN vs. WALBRIDGE A. FIELD.

THIRD CONGRESSIONAL DISTRICT OF MASSACHUSETTS.

This district lies wholly within the city of Boston, and the contest arises on account of the alleged errors of the ward officers of the city in making the count, which errors a committee of aldermen sought to correct in pursuance of an act of the legislature of Massachusetts.

Held, That this act could not have been intended to apply to the election of Representatives in Congress.

The words "fourth district," after the words "Representative in Congress," do not constitute a part of the legal designation of the office; and ballots cast in the third district, reading "For Representative in Congress, fourth district, Walbridge A. Field, of Boston," must be counted for contestee.

Laws relating to the counting of votes must be strictly construed and rigidly enforced. After the count of votes for Representative in Congress by United States supervisors, who remain with the ballot-boxes until the count is completed and the certificate made out, it is not competent for any State to provide another board of canvassers who may take possession of the ballot-boxes, exclude the Federal officers, and secretly count the votes and declare a different result.

The House is not precluded by the face of the returns, but may proceed to inquire into the validity of the election of any one of its members, and in such inquiry has all the power of a court in cases of *quo warranto*.

The House adopted the majority report March 28, 1878.

FEBRUARY 21, 1878.—Mr. SPRINGER, from the Committee of Elections, submitted the following

REPORT:

The Committee of Elections, to whom was referred the contested-election case from the third Congressional district of Massachusetts, having had the same under consideration, submit the following report:

The third Congressional district of Massachusetts is composed of wards 13, 14, 15, 16, 17, 18, 19, 20, 21, and 24 of the city of Boston, and is the only district in Massachusetts wholly comprised within the limits of a city. The election for Representatives in Congress took place in that State on the 7th day of November, 1876, at which time Presidential electors and State officers were elected. One polling-place was opened in each ward of the city of Boston, and the election was held in each ward by a warden, clerk, three inspectors appointed by the mayor, and three inspectors elected by the qualified voters of the ward. The warden presides at the election, and it is the duty of the warden and inspectors, with the assistance of the clerk, to receive, sort, and count all the votes cast. The ballots are taken out of the boxes and counted from time to time during the day, and the ward officers are thus enabled to finish the counting soon after the closing of the polls, and the result must be publicly declared in open ward meeting before adjournment.

The result is then transmitted, with all the ballots and papers, to th

city clerk of the city of Boston. These provisions of the law were strictly complied with, and there is no allegation of fraud, illegality, or irregularity of proceedings in conducting the election up to and including the canvass of the votes and transmission of the result by the ward officers. But it is alleged that the ward officers committed errors in making the count, and on account of these alleged errors the contest arises in this case.

There were three counts of the votes cast for Representative in Congress from the district in question. The first count was that made by the ward officers; the second was that made by the United States supervisors of election, appointed in pursuance of sections 2011 and 2012 of the Revised Statutes of the United States; and the third count was made by a committee of the board of aldermen of the city of Boston.

We have already pointed out the manner in which the first count was made. The second count was made by two supervisors of election appointed for each ward by the circuit court of the United States for the circuit in which the city of Boston is situated. These supervisors were appointed upon the recommendation of the respective candidates for Congress, or their friends, and were "of different political parties," as the law of Congress requires. They attended the election in each of the wards and personally supervised the election and the count of the votes, and counted those cast for Representatives in Congress. Section 2017 of the Revised Statutes of the United States makes it the duty of supervisors of elections to attend the election, count the votes, and remain with the ballot-boxes until the count is wholly completed. They performed their duty and made return of the result to the chief supervisor of the election, as required by law.

The counts made by the ward officers and the United States supervisors substantially agree. The ward officers' count is as follows:

	Votes.
Benjamin Dean received	9,308
Walbridge A. Field received	9,276
Walbridge A. Field (fourth district)	25
A. Field	1
Field	1
Samuel D. Smith	1

The supervisors' count was precisely the same as this except that they did not return the scattering votes cast for A. Field, — Field, and Samuel D. Smith. By both of these counts Mr. Dean, the contestant, is elected, even if the 25 votes cast for Walbridge A. Field, fourth district, and the 2 for A. Field and — Field are counted for the sitting member.

The third count was made on the Friday, Friday night, and Saturday after the election, by a committee of three aldermen, who assumed to act in pursuance of section 4 of an act of the State of Massachusetts entitled "An act in addition to an act relating to elections," approved April 26, 1876. The aldermanic count assumes two phases. The committee, consisting of three aldermen, reported the result of their count as follows:

	Ballots.
Benjamin Dean	9,315
Walbridge A. Field	9,295
Walbridge A. Field (for member of Congress for the fourth district)	25
Wm. A. Field	1
Field	3

They further state that the 25 ballots were cast in the eighteenth ward, and the number of the district was printed on the ballots. The

committee were of the opinion that it was the intention of the voters who cast these ballots to vote for the sitting member; but, under the advice of the city solicitor, they submitted the facts and the whole subject to the judgment and decision of the board of aldermen. (Record, page 9.) If the 25 votes in question were counted for the sitting member, this count would elect him by five majority. The board of aldermen, after considering the whole subject, reported the result somewhat differently, as follows:

Walbridge A. Field, of Boston, nine thousand three hundred and twenty; twenty-five of which were headed ward 18 and read as follows: "For Representative to Congress, fourth district, Walbridge A. Field, of Boston."

Benjamin Dean, of Boston, nine thousand three hundred and fifteen.

William A. Field, one.

Field, three.

Leopold Morse, one.

Rufus S. Frost, three.

Francis M. Weld, one. (Record, p. 10.)

In this manner the result was certified to the governor, and he issued a certificate of election to Walbridge A. Field. Mr. Dean gave notice of a contest under the statute of the United States, and the point made by the contestant and the contestee, and the evidence taken, relate to the validity of the respective counts, except as to wards 16 and 18, and do not go to the merits of the case further than the counts themselves, except that the depositions of some of the United States supervisors and inspectors and of the aldermen were taken to show that they had counted correctly. We are then, in the first place, to determine which of the respective counts is the one made in pursuance of law, and which this House must accept as valid and binding upon it in the absence of a contest going behind the face of the returns as they appear by the respective counts.

As the count of the ward officers and that of the United States supervisors both elect Mr. Dean, and as the aldermanic count would also elect him unless the 25 votes cast for the "fourth district" are to be counted for the sitting member, it may be proper first to consider what disposition should be made of these 25 votes.

In the eighteenth ward of the city 25 ballots were cast designating the Congressional office and candidate as follows:

"For Representative in Congress, fourth district, Walbridge A. Field of Boston."

The election was held in the third district, and Mr. Field resided in the district in which he was a candidate. Ought these ballots to be counted for the sitting member? The questions involved in this point were ably discussed by counsel on both sides, and the authorities do not agree to such an extent as to leave the question entirely free from doubt. But your committee are of the opinion that a liberal interpretation of the law in the interest of enlarged suffrage and the honest intentions of electors would warrant us in counting these ballots for the candidate for whom they were evidently intended.

The election was in the third district. The electors of that district had no legal right to vote in the fourth district, much less to vote in the third district for a Representative for the fourth district. We must assume, then, that the persons who cast these ballots intended no violation of law, but that they were acting in good faith and were honestly endeavoring to express a choice for a Representative in Congress in the district in which they were entitled to vote. The office to be filled was that of "Representative in Congress." That is what the voter must have looked to when examining his ballot. The words "fourth district"

do not constitute a part of the legal designation of the office, and in this case we are inclined to regard the erroneous designation of the number of the district as surplusage.

We are therefore compelled, in the first place, to decide this case upon the validity of the respective counts, except as to wards 16 and 18, hereinafter considered.

The aldermanic count was made, it is claimed, in pursuance of section 4 of the act of that State approved April 26, 1876, which is as follows:

SEC. 4. If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reasons to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election. The board of aldermen, or their committee, shall thereupon, and within five days, Sunday excepted, next following the day of election, open the envelope and examine the ballots thrown in said ward, and determine the questions raised; they shall then again seal the envelope, either with the seal of the city or a seal provided for the purpose, and shall endorse upon said envelope a certificate that the same has been opened and again sealed by them in conformity to law; and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen or their committee, shall alter and amend such ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

This provision of the State law could not have been intended to apply to the election of Representatives in Congress. There is but one district in the State as now apportioned in which it could have been made applicable, and that is the district in question. It is wholly within the city limits of the city of Boston, and hence the machinery of the section applied to it by mere accident. It cannot be presumed that a law would have been framed by the legislature of Massachusetts providing for a review of the counts of votes cast for Representatives in Congress, which law could not possibly apply unless all the voting precincts should be within the limits of a single city. For this reason, if for no other, the section quoted has no application to Congressional elections.

Furthermore, it is claimed by the contestant that this law was not even complied with in any essential provision. But your committee are of the opinion that if the section had been strictly complied with, the count made in pursuance of its provisions would not be valid as against the count made by the ward officers and the United States supervisors of election. The statements filed by the ten qualified voters of each ward, as the basis for the aldermanic count, alleged generally that the returns of the ward officers were erroneous in this, that they did not correctly give the result. There was no allegation of fraud or illegality of any kind. The election was conducted strictly in accordance with law, and the count and public declaration of the result were made as required by the State statute.

The duties of the United States supervisors in reference to the election are prescribed by sections 2017, 2018, 2019 of the Revised Statutes of the United States, which are as follows:

SEC. 2017. The supervisors of election are authorized and required to attend at all times and places for holding elections for Representatives or Delegates in Congress and for counting the votes cast at such elections; to challenge any vote offered by any person whose legal qualifications the supervisors or either of them may doubt; to be and remain where the ballot-boxes are kept at all times after the polls are open until every vote cast at such time and place has been counted, the canvass of all votes polled wholly completed, and the proper and requisite certificates or returns made, whether the certificates or returns be required under any law of the United States, or any State, Territorial, or municipal law, and to personally inspect and scrutinize from time to

time and at all times, on the day of election, the manner in which the voting is done and the way and method in which the poll-books, registry-lists, and tallies or check-books, whether the same are required by any law of the United States, or any State, Territorial, or municipal law, are kept.

SEC. 2018. To the end that each candidate for the office of Representative or Delegate in Congress may obtain the benefit of every vote for him cast, the supervisors of election are, and each of them is, required to personally scrutinize, count, and canvass each ballot in their election district or voting precinct cast, whatever may be the indorsement on the ballot, or in whatever box it may have been placed, or be found, to make and forward to the officer who, in accordance with the provisions of section 2025, has been designated as the chief supervisor of the judicial district in which the city or town, wherein they may serve, acts, such certificates and returns of all such ballots as such officer may direct and require, and to attach to the registry-list and any and all copies thereof, and to any certificate, statement, or return, whether the same or a part or portion thereof be required by any law of the United States or of any State, Territorial, or municipal law, any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known.

SEC. 2019. The better to enable the supervisors of election to discharge their duties they are authorized and directed in their respective election districts or voting precincts, on the day of registration, on the day when registered voters may be marked to be challenged, and on the day of election, to take, occupy, and remain in such position from time to time, whether before or behind the ballot-boxes, as will, in the judgment, best enable them to see each person offering himself for registration, offering to vote, and as will best conduce to their scrutinizing the manner in which the registration or voting is being conducted; and at the closing of the polls for the reception of votes, they are required to place themselves in such position with relation to the ballot-boxes for the purpose of engaging in the work of canvassing the ballots as will enable them fully to perform the duties in respect to such canvass provided herein, and shall there remain until every duty in respect to such canvass certificates, returns, and statements, has been wholly completed.

Congress, in pursuance of its constitutional power to make regulations as to the times, places, and manner of holding elections for Representatives in Congress, or to alter State regulations on these subjects, enacted the foregoing provisions. They must be held valid and binding upon all the States. From the moment of the enacting of these provisions (February 28, 1871) they became a part of the election law of the State of Massachusetts, overriding all opposing State statutes made or to be made by the State, and the passage of the State law of April 20, 1872, authorizing an aldermanic count, so far as it provided for the taking of the final count of the votes for the Representative in Congress out of the supervision and scrutiny of the United States supervisors of election, was an evasion if not a nullification of the Federal law. After Congress had provided for the appointment of two supervisors of election for each voting place, and had required such officers to count the votes for Representative in Congress, and to remain with the ballot-boxes until the count was wholly completed, and the certificates made out, it is not competent for any State to provide another board of canvassers, who may take possession of the ballot-boxes, exclude the Federal officers, and secretly count the votes, and declare a different result.

As the counting of the votes is now admitted to be the most important function to be performed in reference to an election, laws relating to this part of the election machinery must be strictly construed and rigidly enforced. The count made by the aldermen was made in secret three or four days after the election, partly in the night-time, and the United States supervisors, and all other persons except the three aldermen, were excluded from the room, and were not permitted to see what was being done. A count made under such circumstances is in derogation of the acts of Congress, and is of no validity whatever.

In the foregoing considerations relating to this case, we have treated solely in reference to the validity of the respective counts. We have

supposed that the validity of the aldermanic count would not be seriously insisted upon; but since it has been urged in the argument of counsel that the law of Massachusetts providing for the aldermanic count is valid, and the count made in pursuance thereof binding upon this House, we will consider whether that law has been complied with in this case. The fourth section of the act of the legislature of Massachusetts, approved April 26, 1876, is relied upon as authority to sustain the count made by the board of aldermen or their committee. As this section confers upon the board of aldermen, or their committee, a special jurisdiction, it must be strictly construed, and such board of aldermen cannot proceed except in strict accordance with the provisions of that section.

If the board of aldermen, or their committee, assume to act in a manner different from that prescribed by the section referred to, their acts are absolutely void. It will be observed that the board of aldermen are not by the laws of Massachusetts a general returning-board. They can only act in certain specified cases, and when the foundation for their jurisdiction is laid. It is provided in said section that "if, within three days next following the day of an election, ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen, or the committee thereof appointed to examine the returns of said election." The statement required by the ten qualified voters must specify wherein the returns are in error. It is not sufficient to allege generally that the count made by the ward officers was not correct, or that they counted more votes for one candidate than he was entitled to, or less votes for another than he received.

This petition constitutes the jurisdictional fact in the case, and unless it complies with the statute no jurisdiction is conferred on the board of aldermen, or upon their committee, and all proceedings by them not founded on a petition which complies with the statute are utterly void and of no effect. The rule of law applicable in such cases is well established. McCrary, in his treatise on the American law of elections (sec. 280), says: "An application for a recount of ballots cast at an election will not be granted unless some specific mistake or fraud be pointed out in the particular box to be examined. Such recount will not be ordered upon a general allegation of errors in the count of all and giving particulars as to none of the boxes." (Kneass's case, 2 Parsons, 599; Thompson vs. Ewing, 1 Brewster, 67, 97.)

In Skerret's case (2 Parsons, 509) the court of common pleas of Philadelphia held that the true rule "regulating such proceedings should be defined, so as to advance on the one hand substantial and meritorious and to arrest on the other futile and querulous complaints. It is not sufficient to state generally that A received a majority of votes, while the certificate was given to B, and therefore the complainants charge that there was an undue election. This is but a conclusion, and it is not for the pleader to state conclusions, but facts from which the court may draw conclusions. If fraud is alleged, the petition must state the manner in which the fraud was committed, the number of votes fraudulently received or fraudulently rejected." (See Carpenter's case, 2 Parsons, 537; Lelar's case, 2 Parsons, 548; Kneass's case, 2 Parsons, 553.)

It was held also by the supreme court of Pennsylvania, in the case of Gibbons vs. Shepherd (2 Brewster, p. 2), that certainty to a common intent was required, that the petition should not be so loosely

drawn as to permit the powers of sworn officers chosen by the people to be inquired into without well-defined cause. McCrary, in section 283 of his work, says: "The same rule should be applied to a pleading of this character that is applied to all other similar pleadings. It should state in a legal and logical form the facts which constitute the ground of the complaint. Nothing more is required, nothing less will suffice." The supreme court of Illinois (1 Breese, 285) held "that an affidavit for a writ of attachment which does not comply with the statute confers no jurisdiction, and all subsequent proceedings are void." As the fourth section of the Massachusetts act is held to confer the jurisdiction upon the board of aldermen to count these votes upon the filing of a petition specifying the errors, if such petition does not comply with the statute no jurisdiction is conferred.

The right of the board of aldermen or their committee to examine the ballots is not to be exercised except in certain cases and in the manner provided by the law above referred to. The statute gives no general right to substitute an aldermanic count for a ward count. The powers of the aldermen are limited to specified cases. Mr. Howland, city solicitor of Lynn (page 93 of the Record), in an opinion submitted to the mayor and board of aldermen of that city on the 8th of November, 1876, in reference to a similar case, advised the aldermen that the petitioners had failed to specify wherein they deem the returns to be in error, and that in the absence of such specification there was no question raised for the aldermen or committee to determine. The legislature of Massachusetts in a number of contested-election cases adopted the following rule (page 78 of the Record), in the case of Morse against Lonnergan. The rule referred to is this: That in the absence of any evidence of fraud in the manner of calling, holding, or conducting the meeting at which the election is held, or in the manner of ascertaining the result of the election, or unless the petitioner shows a reasonable ground for supposing an error in the count other than the mere closeness of the vote, the committee will not recount the ballots.

The same rule was adopted in the case of Walden *vs.* Chadwell (Record, page 79), and in the following contested-election cases decided by the house of representatives of the State of Massachusetts (the opinions in each case are printed at length in the Record): Scribner *vs.* Keyes, page 85; Garity *vs.* Crossman, page 91; Graves *vs.* Edson, page 94; Austin *vs.* Sweet, page 98; Burt *vs.* Babbitt, page 102; Thomas B. Green, page 103, and Stimpson *vs.* Breed, page 110. By careful examinations of the opinions in the foregoing cases recently decided in the State of Massachusetts it will be seen that it is well settled that the mere fact of a close vote will not justify a recount, either by the board of aldermen or by a legislative committee. It thus appears that the law in this class of cases is well settled by the Massachusetts legislature. In the case now under consideration no error is alleged, except that more votes were counted for one candidate than he was entitled to, and less for the other than he received; or, in other words, mere closeness of the vote is the sole ground for the recount. The chairman of the sitting member's committee testified (page 144 of the Record) that he knew of no errors in the count when the petitions were prepared, but that as Mr. Field was defeated according to the ward officers' and supervisors' count, he could lose nothing by a recount, and might be benefited by it.

This being the sole reason of a recount of the ballots, and no specifications having been made upon which the aldermen could act, all their proceedings in reference to such recount are without authority of law

and of no effect. The petition, which was signed by the ten voters of each ward, was the same in each of the wards, and is as follows:

To the city clerk of the city of Boston:

The undersigned, qualified voters of ward 13, in the third Congressional district, hereby state that they have reason to believe that the returns of the ward officers of said ward for member of Congress in said Congressional district, at the election of November 7th, 1876, are erroneous, in that all the ballots cast for Walbridge A. Field as member of Congress were not counted and credited to him, and that more ballots were credited to Benjamin Dean as member of Congress than were cast for him; and they ask for a recount of the vote of said ward for member of Congress, in accordance with the provisions of section 4 of chapter 182 of the acts of the year 1876.

(Signed by 15 voters of the ward.)

This statement does not specify wherein the ward returns are in error. It simply states that the signers have reason to believe that the returns of the ward officers are erroneous, and that all the ballots cast for one candidate were not counted, and that more ballots were cast for the other candidate than he received. Nothing can be more general. The petition simply states a conclusion, and no jurisdictional fact appears. The statute, it will be remembered, authorizes the aldermen "to determine the questions raised." The petition raises no question. It simply concludes by asking for a recount of the votes. The law did not authorize the petitioners to ask for a recount. It was the duty of the board, or of their committee, to open the envelopes and *examine* (not to count) the ballots thrown in said ward, and "determine the questions raised." It will be observed that the word "examine" is used in reference to the ballots, not the word "count." They were authorized simply to examine the ballots to determine the "questions raised."

This fact presupposes another equally important, to wit, that the petition raised specific questions, which could be determined by examining the ballots, not by recounting them. As, for instance, the petitioners might have alleged that fifty ballots were counted as straight Republican tickets, but that upon examining these ballots it would be found that the name of Mr. Dean had been printed upon these tickets, and that this fact was overlooked in counting the ballots; that they had been counted simply as straight tickets. If such a specification had been made an examination of the ballots would have determined the question raised. Or the petitioners might have alleged in ward 18 that twenty-five (25) ballots cast for Representative in Congress, fourth district, for Walbridge A. Field, of Boston, were not counted for Mr. Field by the ward officers, as they were required by law to count them, and that said ballots were intended to be counted by the persons who cast them for the said Walbridge A. Field for Representative in Congress, third district. Such allegations as these in the petition would have raised questions which could have been determined by an examination of the ballots. Nowhere in the law of Massachusetts are the aldermen authorized generally to make a recount of the ballots. Their authority only extends to an examination of the ballots which may have been specified in the petition, to determine the questions raised.

It will be observed by examining the fourth section of the law of Massachusetts that jurisdiction is conferred upon the board of aldermen, or their committee, to open the envelopes and examine the ballots thrown; and upon the certificate of the board of aldermen, or their committee, the city clerk shall amend the ward returns of the district. The function of canvassing votes, referred to in this section, not pertaining to the office of aldermen, the specific authority to the board of aldermen, or to their committee, is such a jurisdiction as cannot be exercised

by both at the same time. The committee does not act as a committee of the aldermen, responsible to the aldermanic board, and required to report to it, but it acts upon the specific jurisdiction conferred upon it by the statute, and when the committee takes jurisdiction of the case it ousts the board of aldermen of the concurrent jurisdiction that it might have. But notwithstanding this fact an examination of the record in this case will show that the committee of aldermen, consisting of three members, performed the functions of canvassers or examiners of the ballots in this case; that they agreed upon a report as to the result of that count; that they then submitted their report to the board of aldermen, and that the board of aldermen then took jurisdiction of the case, amended the return as prepared by the committee, and submitted a different return to the city clerk as the result of the aldermanic count.

The committee of aldermen having taken jurisdiction of this case, could only report its proceedings to the city clerk, and the city clerk was in duty bound to enter the report of the aldermen upon the record, or to alter and amend the ward returns in the manner pointed out by the committee of aldermen. Assuming that the committee had jurisdiction, their acts were legal, and their finding was the only one which the clerk was authorized to enter as the result of such examination. But the clerk did not do this. He entered up as the result of the examination of the ballots, in pursuance of the authority conferred by the petition, an order made by the board of aldermen of the city of Boston, which board had not examined the ballots and had not determined for itself the questions raised, and which, according to the letter of the law (the committee having taken jurisdiction of the case), had no authority whatever to act in the premises. Hence we hold that the pretended recount by the aldermen was not made in pursuance of the law of Massachusetts, and cannot be set up as a legal count of the votes for members of Congress in the third Congressional district, as against the count made by the ward officers and supervisors of the United States.

The laws of Massachusetts in reference to conducting and canvassing elections must be construed together. It will be seen that every safeguard has been thrown about an election in that State. Especially is it so in the city of Boston. Three inspectors of the ward elections are appointed by the mayor; three are elected by a vote of the people; and these, together with the warden, who presides at the ward meeting, and the clerk, constitute a board of eight persons, representing all shades of political sentiment, and is composed of persons selected in such a manner as to secure integrity and fairness in the conduct of the election, in the canvassing of the returns, and declaration of the result. The election must be held openly. The voting and counting are both done in the presence of the people. Every opportunity is offered to carefully scrutinize the proceedings. The inspectors are required to count the votes while the election is progressing, and to announce the result as soon as possible after the election, and openly declare the result. In addition to these State provisions, the United States supervisors, one of each political party, were present at the election in question, and they also carefully scrutinized the ballots and counted the votes in each of the wards. The testimony is all to the effect that the election was honestly and fairly conducted in every part of the city, and no frauds are anywhere alleged. The fairness of a count made under such circumstances must be admitted by all, and such a count ought not to be set aside without the very best of reasons founded upon the law and the facts.

On the contrary, the aldermanic count was made of the whole vote of the district by three persons, who conducted their count in secret and

were not under any restraint in reference to the count or the declaration of the result. A recount is always viewed with suspicion, and especially so when the original count was entirely free from all allegations of fraud or incompetency on the part of the election officers, and was conducted in open daylight in the presence of the voters. It is not pretended that there was any fraud in this election, nor were any errors known to exist when the petitions were signed. There was no reason on the part of the petitioners, so far as the facts were concerned, to justify such belief. The only reason that could have existed was that the sitting member was not elected by the ward counts. He could not be elected without a recount, and as the majority was small, he might, by a careful count, by skillful manipulators of the ballots, overcome the small majority by which the contestant was returned. To uphold a count under such circumstances would be to pervert both the letter and spirit of the law; would be to encourage futile and querulous complaints and groundless and frivolous contests.

The State law providing for the aldermanic count was wholly disregarded by the city clerk. The law requires that he should enter the ward returns at length upon the records, and that such returns should stand, except that he should alter and amend the ward returns in accordance with the certificate of the board of aldermen or their committee. It will be observed that the ward returns are continually kept in view as the record of the votes cast. These ward returns, as amended by the aldermen, must be certified by the clerk to the governor and council of the commonwealth. But it will be observed by examination of the record in this case that this part of the law has been wholly disregarded. The clerk seems to have withheld the entry of any returns upon his records until the receipt of the certificate from the board of aldermen, when their return or count of the votes was entered upon the record as the true return of the ward. We do not contend that the clerk by his illegal conduct could invalidate the proceedings, but the board of aldermen and the committee having acted without jurisdiction, and the clerk having also acted without authority of law, their proceedings are all illegal and void, and the recount made by them and certified in the manner shown is of no validity whatever.

There is in Massachusetts no county or other canvassing board. All returns are sent to the governor and executive council, and the governor and council examine the returns and determine who is elected. The following are the provisions of the State law on this subject:

SEC. 15. The votes in elections for national, State, county, and district officers shall be received, sorted, and counted by the selectmen, and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person, and the title of the office for which he is proposed shall be entered in words at length by the town and ward clerks in their records. The ward clerks shall forthwith deliver to the city clerk certified copies of such records, who shall forthwith enter the same in the city records.

SEC. 17. City and town clerks shall, within ten days from the day of an election for governor, lieutenant-governor, councilors, senators, secretary, treasurer, and receiver-general, auditor, attorney-general, Representatives in Congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district attorneys, or clerks of courts, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen and sealed up, to the secretary of the commonwealth.

It will thus be seen that town clerks are to record in "words at length" "the names of persons voted for, the number of votes for each person, and the title of the office for which he is proposed." Ward clerks are to send copies of these records to the city clerks, who are forthwith to record them in "words at length" in the city records, and the copies of

these records "in words at length" are to be sent to the secretary of state, for the use of the governor and council. The records thus certified are the only legal records relating to elections. These are the records that the committee of aldermen may by their certificate direct the city clerk to amend whenever they have acted under authority of law in amending the same. In this case there is no such record, nor has any such record been kept by the clerk of the city of Boston. He never recorded the ward returns as he was required to do. He made an aggregate statement of the vote (Record, p. 42) not in accordance with the ward returns or the vote of the board of aldermen, and even the entry was made eight days after the returns were filed with him.

Another fatal objection to the aldermanic count is that the committee who examined these ballots never certified to the city clerk any amendments of the ward returns. The committee was the only body to do this. The board of aldermen merely passed a vote as to the form of the certificate to the secretary of state, not to the city clerk; and two of the committee who examined the ballots voted against the return which the board of aldermen directed to be made to the secretary of state. Thus there was no certificate of any kind filed with the clerk upon which he could alter the ward returns, and the only action that the committee took in reference to amending the ward returns was reversed by the board, and neither body certified any errors to the clerk. The vote of the board was without jurisdiction, and the report of the committee which alone could act in the premises, was never made to the clerk, and the clerk never made any entries or corrections of ward returns in accordance with the findings of the committee that examined the ballots. The whole proceedings, on the part of the committee, the board of aldermen, and the clerk, were without authority of law; and the recount which is set up in this case as the product of such illegal proceedings is entirely invalid. The contestee bases his right to a seat in this House upon the count made by the aldermen, and since we have shown that the recount and all the proceedings upon which it is based are wholly illegal and void, the contestee derives no title to his seat by reason thereof.

We have treated the case so far as one depending wholly upon the legality of the respective counts, but as to two of the wards in this district we are not confined to the legality of the counts as such. The contestant and the contestee have gone behind the returns in wards 16 and 18, and have taken evidence in relation to the truth of the findings of the official counts. It will be admitted by all that the House, when exercising its authority and jurisdiction to decide upon the elections, the returns, and qualifications of its members, is not precluded by the face of the returns, but may, in its discretion, proceed to inquire into the validity of the election of any one of its members, and in such inquiry has all the power of a court in cases of *quo warranto*. The fact that a person has received a certificate of election to an office does not oust the proper court of jurisdiction to try the title to the office. The certificate is merely *prima facie* evidence of the election of the person holding it, and this House may go behind the returns, and, upon the merits, find a different result. (*Ex parte Ellyson*, 20 Gratt., Va., 10; *McCrary*, see 145, 349, 369, 379.)

If we assume for the sake of the argument that the aldermanic count was legal and valid in the absence of evidence going behind the returns, still we may, by oral evidence, show that such return was not the true result of the election in any one of the wards or in all of them. As before stated, in wards 16 and 18 the evidence in the record goes back

the official counts, and a careful examination of this evidence will not fail to establish clearly what was the true result of the election in said wards, independently of the official counts. It is contended by the contestee that the United States supervisors are not such counting or canvassing officers as are authorized by law to make a legal and valid canvass of the result of the vote in the wards where they act. The contestee insists that the United States supervisors had no other function to perform than that of mere witnesses of the election, and that they were simply authorized to be present, to look on, to count and canvass, and make such notes as they might think necessary, but that they were not authorized to make a return to any State officer or to this House. It is contended that they were simply to be used as official witnesses in cases of subsequent contests under the statute. Assuming this view of their duties to be correct, it will be conceded that such supervisors may be called as witnesses in this contest to testify in regard to any facts within their knowledge relating to the election. The ward officers, eight in number, under their official oaths, certified certain returns as the true result of the vote cast in the several wards.

We may assume that each of these eight officers in each of the ten wards of the city, if called to testify, would swear that the return which they made was the true result of the election. Some of the inspectors were called and did so testify as to the truth of the ward returns. The committee of three aldermen who examined the ballots, and assumed to make a recount of them, were also sworn in the contest and testified as to the manner in which they counted, and that their return was believed by them to be true. If we cannot set off one return against the other, and if the sworn statements of the persons who made these returns are not to be weighed as evidence according to the number of witnesses on either side, and if the counts are to stand upon their legal basis solely with reference to each other, the evidence of the aldermen and of the inspectors taken in the contest will not add anything to the validity of the respective counts, or to the truth thereof. But the evidence of outsiders, of others than the inspectors and aldermen, who may have reliable information on this subject, may be considered as corroborative or not of either of the counts. Let us, then, consider what corroborative testimony there is in the record in reference to the several counts.

In order that a clear understanding may be had of all the evidence taken in the contest relating to the truth of the counts, we will reproduce from the record that portion of the evidence which will throw light upon the subject. The evidence of Viles best states the methods and value of the aldermanic committee's count. He testifies as follows :

Int. 8. How did the committee proceed to count ? State fully and particularly all that was done ?—A. Stebbins, being chairman of the committee, would take the box, place it upon the table before us, take his knife and break the seal and open the box in our presence, lay the ballots out upon the table, part at a time as required ; he would sort them out, count them in twenty-fives, pass them to me ; I would count them, hand them to O'Brien ; he would lay the packages on the end of the table, in packages of twenty-five at a time, one package across the other, so if there was an error in the count we could easily go back of the packages and correct it. Occasionally I would find a package of twenty-four as it came from Stebbins. We were counting for members of Congress, third district, in this way, and I would hand it back to Stebbins, and he would recount it and place another ballot with it ; and, occasionally, one with twenty-six ; I would pass that to him, and one would be taken from it ; then I would recount it, and pass it to O'Brien. I think, in one or two instances, a package would pass me, and O'Brien would detect the error. That was the *modus operandi* in regard to all the ballots.

On the other hand, the following is the evidence and testimony regarding the correctness of the ward count in ward 16 :

WARD-OFFICER'S RETURN.

CITY OF BOSTON:

At a legal meeting of the inhabitants of ward number sixteen in the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, qualified as the law directs, holden in said ward on Tuesday, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, for the purpose of giving in their votes for one able and discreet person, being an inhabitant of district number three, to represent said district in the next Congress of the United States, the whole number of votes given in as aforesaid were sorted, counted, recorded, and declaration thereof made, as by the constitution and laws are directed, and were for the following persons:

Walbridge A. Field had six hundred and twenty-one (621) votes.

Benjamin Dean had eight hundred and ninety-six (896) votes.

In testimony whereof the warden, inspectors of election, and clerk of said ward have hereunto set their hands the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six.

ISAAC J. WETHERBY, *Warden.*
 RANDALL G. BURRELL,
 FRANK G. PARKER,
 W. HARRY NEAL,
 FRANCIS M. SMITH,
 PATRICK M. DENON,

Inspectors.
 CHARLES B. HUNTING, *Clerk.*

A true copy of original return, duly filed in city clerk's office.

Attest:

S. F. McCLEARY,
City Clerk.

United States Supervisor's Return.

BOSTON, November 2, 1876.

This is to certify that the undersigned persons have received the number of votes affixed to their names in ward sixteen, Boston, on Tuesday, November the 7th, for Representatives to Congress from the third Congressional district of Massachusetts.

Benjamin Dean, 897.

Walbridge A. Field, 621.

JOHN F. DALY,
 ABRAHAM J. LAMB,
Supervisors.

The discrepancy of the vote between the ward officers' count and the supervisor's count, instead of tending to impeach either count, is strong evidence of their correctness, as it relates to Fitzgerald's vote, which was evidently returned as it should have been by the supervisors, and not by the ward officers. (See Daly's testimony in answer to cross-interrogatory 5.) It was also erroneously not counted by the aldermanic committee, as appears by the minutes of Stebbins and O'Brien. Now we come to the testimony of the witnesses as to the results of the counting of the ballots at the ward-room, and the manner and care of the counting:

Deposition of Abraham Lamb.

Int. 2. What office, if any, did you hold in ward 16 on November 7, 1876?—A. United States supervisor of election, representing the Democratic party.

Int. 3. Did you attend at the polls on that day and faithfully discharge your duties as such supervisor?—A. I did.

Int. 4. Did you count the ballots cast for member of Congress carefully, and make a true return of the number cast for each candidate to the chief supervisor?—A. Yes, sir.

Int. 5. Did Mr. Daly, the Republican supervisor, also count the same ballots?—A. He did.

Int. 6. Have you any doubt that you counted for Mr. Dean and Mr. Field all the ballots actually cast for them, respectively?—A. I have none.

Int. 7. Did you know of any error or mistake being made in this ward on November

7, 1876, in the count and return of votes cast for member of Congress?—A. No, sir; I did not.

Cross-examination by WILLIAM G. RUSSELL, Esq., of counsel for Mr. Field, the incumbent.

Cross-int. 1. Did you discover any error in the count of the warden and clerk?—A. No, sir.

Cross-int. 2. Did you remain till the ballots were put into the boxes and sealed up?—A. Yes, sir.

Deposition of John F. Daly.

Interrogatory 1. Please state your name, age, residence, and occupation.—Answer. John F. Daly; thirty-six; 130 Castle street, ward 16, Boston; night-watchman for United States Government at custom-house.

Int. 2. What office, if any, did you hold in ward 16 on November 7, 1876?—A. United States supervisor of election, representing the Republican party.

Int. 3. Did you attend at the polls in ward 16 on November 7, 1876, and faithfully discharge your duties as United States supervisor?—A. To the best of my knowledge and ability I did.

Int. 4. Did you count the ballots cast for member of Congress carefully, and make a true return of the number cast for each candidate to the chief supervisor?—A. To the best of my knowledge and belief I made an accurate count and returned the same to the commissioner, the chief supervisor.

Int. 5. Did Mr. Lamb, the other supervisor, also count the same ballots?—A. He did.

Int. 6. Have you any doubt that you counted for Mr. Field all the ballots actually cast for him?—A. None whatever.

Int. 7. Did you know of any error or mistakes being made in this ward on November 7, 1876, in the count and returns of votes cast for member of Congress?—A. I don't understand that question. (Question repeated.) None that I know of, except that I have heard of the recount by the board of aldermen.

Cross-examination by WILLIAM G. RUSSELL, Esq., of counsel for the incumbent:

Cross-int. 1. How long did you remain in the ward-room on the day of election?—A. From the time the polls opened until the ballots were sealed and delivered; all day, until quite into the evening; as late as six o'clock, if not later.

Cross-int. 2. Did you see the ballots put into the box and the box carefully sealed?—A. Yes, sir; I, in connection with the other supervisor, put them in myself; we both put them in together.

Cross-int. 3. Were the ballots you put into the box the same that you had counted, and no others?—A. Yes, sir.

Cross-int. 4. What were you doing during the day up to 3 o'clock p. m.?—A. Supervising the election; watching to see that there was nothing wrong, deciding disputes if occasion required it; having an eye to the success of the Republican ticket, in a fair way.

Cross-int. 5. Did you discover or suspect, or have any reason to suspect, that there was any unfairness in the election in that ward, or any tampering with the ballots or miscounting of the same, intentionally or otherwise?—A. None at all whatever. It was one of the fairest elections I ever saw; in fact, the only dispute we had all day long was a case of dereliction of duty on part of the clerk or register of voters of the city in not putting a man's name on the list who had paid his taxes; there was one other case, which was corrected afterward, Fitzgerald's case.

Cross-int. 6. Who first counted the votes, and into what parcels were they made up?—A. The votes were first counted by the warden and clerk, and made up into parcels of one hundred; the odd ones being left, fractions of a hundred.

Cross-int. 7. When did you as supervisors begin to canvass and count the ballots, and how did you conduct your examination and count, and how did you dispose of the ballots when counted?—A. I couldn't tell what hour we began; should think it somewhere in the neighborhood of three o'clock; that is, on fair recollection; couldn't be positive; it was in the neighborhood of that hour; after the warden and clerk had counted the ballots they put the straight ballots into packages of one hundred each, and the scratched tickets into like packages by themselves, and then we went over each package to see if they were correct as to member of Congress, to see whether they were in packages of one hundred or all straight one way or the other; when counted we tied them up in bundles of one hundred and the fractions by themselves, and tied them with twine, and put them into the box.

Cross-int. 8. Did the supervisors or either of you discover some errors in the count made by the warden and clerk?—A. We found the packages each containing a hundred, and all straight as warden and clerk had counted them, and the same as to the fraction in every instance. We had a warden who was very particular how we did the work.

Cross-int. 9. Then your count was exactly in accordance with that of the warden and clerk, was it?—A. Yes, sir.

Deposition of Thomas McC. Babson.

Int. 3. Were you present at the polls in ward 16, on the 7th of November?—A. I was there all day, from before the polls were opened until after vote was except half an hour.

Int. 4. As far as you could see, did or did not the ward officers attend to their duties in receiving and counting the ballots?—A. They did.

Int. 5. Of what political party was the warden, and of what political party the inspectors?—A. Warden was Republican; the inspectors belonged to both some to one and some to the other. I think there were three Republican and two Democrats.

Int. 6. Was or was not the warden careful and accurate in the discharge of his duties?—A. He was very careful. I think he was very partial to his own party in the discharge of his duties that day. I mean by that as regards votes.

Int. 7. Do you know of any reason to believe that the returns of the ward were in any respect erroneous, or have you ever heard that there was any error by them?—A. I have no reason to believe them erroneous. I have heard of except that I have heard the counsel for Mr. Deans say, within a day or two claim was made that there was an error in the vote. I don't know whether it was made by Mr. Field or not. What I heard was that the recount of the aldermen disagreed with the count of the ward officers.

Cross-int. 9. Was any question as to the receiving of a vote raised during more than two cases?—A. Yes; in three at least, to my knowledge.

Cross-int. 10. Can you name the three cases?—A. There was one case where a man's name had been checked but not voting; two cases, I think, where name was not on the ward-list, who claimed to have been registered. First case was the first-named case; he was allowed to vote.

Cross-int. 11. Are you aware of a discrepancy between the gross number cast in ward 16 at that election, as the same was announced or said to be announced by the warden, and the number of ballots as ascertained by adding the number cast for all the several candidates for the several offices?—A. I have heard a few days about there being some discrepancy. I had the vote as it was at the time but have lost it; the vote was very large; all but about thirty of those registered said to have voted. I do not recollect the exact number.

Cross-int. 12. If you had found such discrepancy of twenty votes would you consider it as in any way affecting the question of the propriety of a recount should have before having heard so many election cases this winter; now I expect any precise agreement as to the votes for any candidate on the tickets and the whole number of votes cast. I shouldn't suppose the number of votes for the ticketing candidates would add up the same as whole number of votes cast in the ward.

Cross-int. 13. If the ward officers announced that there were 1,537 ballots cast and if all the ballots for all the candidates for member of Congress were returned 1,517, and all the ballots for all the candidates for governor were returned 1,527, would you not see in these facts some reason for distrusting the count, and requiring a recount if asked for?—A. No; there was much dissatisfaction with the count among the members of the Republican Battalion in the ward, and I expected many of the members of that organization would vote for the Republican for governor and would not vote for Field.

Cross-int. 14. If the ward officers announced that there were 1,537 ballots cast and if all the ballots for all the candidates for member of Congress were returned 1,527, and all the ballots for all the candidates for governor were returned 1,527, would you not see in those facts some reason for distrusting the count and requiring a recount if asked for?—A. I should not. The only thing that would have caused me to doubt its correctness, would have been to have the total Presidential votes to have fallen materially short of 1,537.

Deposition of Charles B. Hunting.

CHARLES B. HUNTING, a witness for Walbridge A. Field, the incumbent, is duly sworn, in answer to interrogatories proposed by J. LEWIS STACKPOLI, counsel for the incumbent, testified as follows, viz:

Interrogatory 1. State your name, age, residence, and occupation.—Answer: B. Hunting; forty-one; Boston, Mass.; ward 16; clothing dealer.

Int. 2. Were you acting as clerk of ward 16 at the election of November 7, 1880?—A. Yes, sir.

Int. 7. State who acted as United States supervisors in said ward at said election?—A. John F. Dally and Abraham J. Lamb.

Int. 8. State whether said supervisors personally scrutinized, canvassed, and

the ballots for Representative to Congress cast in said ward at said election.—A. They counted them; can't tell how carefully they scrutinized them.

(Cross-examination resumed :

Recross-int. 6. You counted all the ballots in your ward as carefully as possible, did you not?—A. Yes, sir.

Recross-int. 7. Did you not believe, after the count was finished, that the returns made by you to the city hall represented the true number of ballots cast in your ward for Mr. Dean and Mr. Field, respectively?—A. I did.

Recross-int. 8. Don't you now believe the count made by you is the true count of the votes cast for Mr. Dean and Mr. Field, respectively?—A. I believed it then, and believe it now.

Deposition of Patrick M. Denon.

Int. 2. What office, if any, did you hold in ward 16 on November 7, 1876?—A. Inspector.

Int. 3. Were you present at the polls during the day, and did you attend to your duties as inspector?—A. Yes, sir; I was there from the time they opened until they closed, and everything was counted and sealed and delivered to the man to be carried to city hall.

Int. 4. How many of the ward officers in ward 16 were Republicans and how many Democrats?—A. Two inspectors and clerk were Democrats, and the warden and four inspectors were Republicans. I think there were four, two appointed and two chosen.

Int. 9. How was the election conducted on November 7, 1876, by the ward officers in said ward?—A. Very straight, honorable, and correct, as far as I could see; each party watched each other very closely, and I haven't heard of any dishonest action on either side.

Int. 10. Have you ever heard of any error having been made in that ward in the count of votes for any candidate voted for?—A. I heard a rumor since election day of an error being made. I understood that Mr. Dean's vote didn't correspond with the check-list and ballots in the ward-room after being counted by the aldermen; that it wasn't correct as we made it out at the time.

Int. 11. Before the recount was made by the aldermen, did you hear or know of any error being made in the count of votes in ward 16?—A. After they had counted the ballots and the inspectors the check-list, there was a variation of one or two votes between them, and we counted the ballots two or three times—I did myself, and others—to see if we could discover the error, and afterwards the clerk and warden told us they had discovered the error and corrected it. This was after the polls were closed and before they had made up their accounts.

Int. 12. What was the whole number of votes cast in ward 16 on November 7, 1876?—A. Fifteen hundred and thirty-seven, as I got it.

Int. 13. How did you obtain that number? State all the circumstances.—A. After the polls were closed, as the clerk and warden were filling out the votes for different candidates, I took this slip of paper and copied the different candidates' votes on it as I got it from the warden and clerk as they were putting them down on the list to be returned to city hall. I mean whole number of ballots cast in the ward.

Int. 14. Whether or not there were many "stickers" or "pasters" used on the day of election?—A. Something I noticed unusual on that day; so many cut off the top of the Republican ticket, containing the President and Vice-President and electors, and pinned it over the top of Democratic ticket.

Cross-examination by WILLIAM G. RUSSELL, Esq., of counsel for the incumbent

Cross-int. 1. Will you produce and annex to this deposition the memorandum from which you have testified to the whole number of ballots cast in ward 16 on November 7, 1876?—A. I produce it; that is as I got it at the time. (The same is annexed, marked "W. W.—1.")

Cross-int. 2. In whose handwriting is it and when was it made?—A. In my own; it was made after the polls closed, while they were filling out the list to send to city hall.

Cross-int. 3. From whom did you derive the number of votes against each name on the memorandum?—A. Part of the time Mr. Wetherbee, the warden, would tell me, and part Mr. Hunting, the clerk, just as I happened to ask either.

EXHIBIT W. W.—1.

Tilden.	Madden.....	872
	Babson.....	855
	Feith.....	607
	Filkins.....	573
Senatorial Gen. Courts:		
John Noble.....		1,514

Whole number of votes thrown	1
Baker.....	
Counselor.....	
Packard.....	
Toland.....	
Shitleff.....	
Maning.....	
Rice.....	
Adams.....	
Tilden.....	
Hayes.....	
Field.....	
Dean.....	

It will be seen by the foregoing evidence in relation to ward 16 that the ward officially returned for Walbridge A. Field 621 votes; for Benjamin Dean 896. The supervisor's returns show the same, except that Mr. Dean was given one more vote. This is explained by the evidence and is a strong proof of the correctness of the count. In this ward aldermanic count was as follows:

Benjamin Dean 889, or 7 votes less than the ward returns; Walbridge A. Field, 625, or 4 votes more than the ward returns; making a difference of 11 against Mr. Dean. As the aldermanic count elects Mr. Field by only 5 majority as a whole, if it be proven that the aldermanic count is incorrect as to ward 16, and that the ward count is the true result of the votes cast, then the contestant in this case is elected by a majority of 6 votes. The United States supervisors must be regarded as either official canvassers with authority to make a count binding upon the House, or they must be regarded as official witnesses placed in the position to obtain all the facts, or, as the statute says, so situated that all facts may become known through them, "and to the end that such candidate for the office of Representative in Congress may obtain the benefit of every vote for him cast." As official witnesses, their depositions are in the record. They were selected by each of the parties to the contest, or by their respective political friends. It is presumed that they were, in view of the importance of this election, selected with a special reference to their fitness for the duties they were required by law to perform.

Having been designated by the contestant and the contestee themselves to act as such witnesses, through the appointment of the circuit court of the United States, both contestant and contestee are estopped from impeaching the witnesses or discrediting their evidence. The depositions of these supervisors have been taken under the statute in an election contest. They were subjected to cross-examination by counsel, their evidence as to the truth of the returns made by the ward officials is of the very highest character of evidence known to the law. They do not testify on information or belief, but from personal knowledge of the facts about which their testimony was taken. They were legal witnesses. They were present for the very purpose of learning the facts in issue in this case, namely, whether the contestant or the contestee received a given number of votes in the ward where they were required to scrutinize and count the votes by law. They did so scrutinize the ballots and count the votes, not only under the solemnity of their oaths at the time, but in the contest where they are subjected to cross-examination by the contestee's attorneys they reiterate the truth of their former statements, and upon the information and knowledge of the facts which they then obtained. This evidence is not contradicted. It is unimpeached. It is absolutely conclusive as to the facts stated by them. It may be stated that the aldermen also testified that the

count was correct. This is true; but the inspectors of the ward and the clerk also testified to the truth of the ward returns, and we have a right to set off two inspectors and a clerk who counted the ward returns, and their oaths, against three aldermen who made the aldermanic count and their oaths. Then we have the preponderance of evidence in favor of the truth of the ward returns. Not only did the supervisors testify to the fairness of this election, but Mr. Babson, a gentleman of intelligence and a candidate for the legislature, who was present most of the time, also testifies to the fairness of the election and to the evidence of the correctness of this count in ward 16 by the inspectors and supervisors. The marshal, who was present, also testifies that everything was fairly conducted, and the counts were made by the supervisors, as they have testified themselves. In view of the evidence in this case as to the truth of the count by the ward officers and the supervisors, can there be any doubt in the mind of anyone as to the truth of the returns made by the ward officers of ward 16? It has been proven that ward 16 must be counted as returned by the ward officers. If we allow the aldermanic count to stand as to the other wards, this change elects the contestant by a majority of 6 votes.

Let us now consider the evidence regarding the ward count in ward 18.

WARD 18—WARD OFFICERS' RETURN.

W. W.—L.

CITY OF BOSTON:

At a legal meeting of the inhabitants of ward No. 18 in the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, qualified as the law directs, holden in said ward on Tuesday, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six, for the purpose of giving in their votes for one able and discreet person, being an inhabitant of district No. 3, to represent said district in the next Congress of the United States, the whole number of votes given in, as aforesaid, were sorted, counted, recorded, and declaration thereof made, as by the constitution and laws are directed, and were for the following persons:

Walbridge A. Field had fourteen hundred and ten.

Benjamin Dean had five hundred and seventy-nine.

For member of Congress, fourth district, Walbridge A. Field had twenty-five.]

In testimony whereof the warden, inspectors of elections, and clerk of said ward have hereunto set their hands the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six.

B. E. COLE, *Warden.*

CHARLES E. FOX,

ALBERT C. POND,

W. H. CHIPMAN,

WM. H. THOMAS,

Inspectors.

JOHN ALBREE, *Clerk.*

A true copy of original return duly filed in city clerk's office.

Attest:

S. F. MCCLEARY,

City Clerk.

WARD 18.—SUPERVISORS RETURN.

18.—H. L. H.

This is to certify that we, the subscribers, supervisors of the vote of ward eighteen, city of Boston, have examined and counted the votes cast for Representative for member of Congress of the third district, with the following result:

Whole number of votes, 1,989.

For Walbridge A. Field, 1,410.

For Benjamin Dean, 579.

Twenty-five additional votes cast for Walbridge A. Field, of fourth district, not counted; left for decision of Committee on Elections.
Respectfully submitted.

WILLIAM SWINSON.
DANIEL P. SULLIVAN.

To Hon. HENRY L. HALLETT,
Chief Supervisor of Elections for District of Massachusetts.
BOSTON, - November 7, 1876.

The following is the oral testimony regarding the counting of ballots in ward 18:

Deposition of William Swinson.

Interrogatory 1. Please state your name, age, residence, and occupation.—Answer. William Swinson; fifty-nine; 76 Rutland street, ward 18; merchant; am out of business now.

Int. 2. What office, if any, did you hold on November 7, 1876?—A. United States supervisor in ward 18, to represent the Republican party. I had lived in the ward thirty-five years; have been warden and inspector when it was old ward 11; have not been much of a politician since the old Whig party.

Int. 3. Did you attend at the polls on that day, November 7, 1876, and discharge your duties?—A. I did.

Int. 4. Did you carefully count the ballots cast for Representative to Congress in that ward?—A. I did.

Int. 5. Did Mr. Sullivan, the other United States supervisor, also carefully count the same ballots?—A. I think he counted a good part, or was there present most of the time. I can't say whether he personally counted all the votes; I have an impression that he did.

Int. 6. What ward officers counted the ballots for member of Congress?—A. The warden; I think only one person at a time, with the assistance of the clerk; they kept a very correct method, a regular debit and credit account, so that there was no chance for mistakes. One inspector also counted, and as they were counted they were passed to our table and we counted. The whole counting was done by two persons at a time; the others were attending at the boxes.

Int. 7. Did the counts made by you and Mr. Sullivan agree with that made by the ward officers?—A. They did.

Int. 8. How long have the warden and clerk been ward officers in ward 18?—A. That I cannot state positively; I think three years.

Int. 9. Were they or not persons fitted for performing the duties required of a warden and a clerk?—A. I think they were; have no doubt of it.

Int. 10. Have you or not ever heard of any error or mistakes being made by them, or by the supervisors, on November 7, 1876?—A. No; I have not.

Deposition of Daniel P. Sullivan.

DANIEL P. SULLIVAN, a witness on behalf of Benjamin Dean, contestant, being first duly sworn, in answer to interrogatories proposed by S. A. B. Abbott, esq., of counsel for the contestant, testified as follows, viz:

Interrogatory 1. Please give your name, age, residence, and occupation.—Answer. Daniel P. Sullivan; twenty-seven; ward 18, Northampton street, Boston, Mass.; wood-carver.

Int. 2. What office did you hold in ward 18 on the 7th day of November, 1876?—A. United States supervisor, on behalf of Democratic party.

Int. 3. Will you describe as fully as you can the manner in which the votes cast in that ward for member of Congress on November 7, 1876, were counted by you and the other officers in that ward?—A. The system was, the warden, clerk, and one of the inspectors did the counting. The warden and clerk were present at the counting of each lot taken out, and the inspector was absent when one lot was being counted. After they counted all the ballots for all the candidates on the tickets they tied the ballots together; they had the Republican ballots in one lot and the Democratic in another and the Prohibition in another, and they tied a string around each bundle and marked on each bundle, on a ballot, the vote for Mr. Dean and for Mr. Field; then they were handed to the supervisors, Mr. Swinson and myself. Mr. Swinson would count the ballots and I would watch him, and after he got through he would hand them over to me and he would watch me counting. In some cases I counted them over two or three different times to see if the figures compared with the ward officers' count, and each time I found them to be correct.

Int. 4. How carefully did you and Mr. Swinson count the ballots, and how certain are you of the accuracy of the returns made by you and Mr. Swinson as supervisors, and by the ward officers?—A. In every case, as I stated before, Mr. Swinson would count and I would count, and sometimes I would go over them two or three times to see if there was a single error, and every time they would tally with the ward officers. I am certain if there was any error in the count, or any tampering with the votes, it must have been done by other parties than the ward officers or the supervisors.

Int. 5. Of what political party were the ward officers of ward 18, and how carefully and accurately did they count the ballots?—A. Mr. Thomas, one of the inspectors, calls himself a Democrat. A gentleman named Babcock, who was one of the inspectors, is a sound Democrat. There was another one, named Fox, who talked a little like a Democrat. I don't know what his creed was. He talked that Mr. Field was not entitled to those twenty-five votes for fourth district. Neither of these had anything to do with counting the ballots; they merely stood at the check-list; the others I could not say what they were; I suppose they were Republicans. I noticed they fought pretty well for Mr. Field. I don't know how carefully they counted; I know their tally always agreed with Mr. Swinson's and myself. I should say they were as competent a set of ward officers as I ever saw.

Mr. Thomas says (int. 5, Record, p. 75) that "the warden and clerk of ward 18 belonged to the Republican party," that "they were perfectly competent, reliable persons," and that "they very carefully discharged their duties" on the day of election.

He also says that he never heard of any mistake being made in that ward.

Mr. Dickinson, the chairman of Mr. Field's district committee, and a voter in ward 18, says (Record, p. 144) that he never knew of any mistake being made by the ward officers other than that supposed to have been discovered by the recount made by the aldermen, and that he signed a petition for a recount because he "*believed after the returns of the ward officers were all in* that Mr. Field might be benefited by a recount, and certainly knew he could not be declared elected without a recount." His experience as the chairman of a political committee had taught him that, when a person had failed of an election upon a count made by sworn officers of both political parties, in the presence of the candidates and of their friends, he might succeed upon a recount made by three aldermen, sitting with closed doors and excluding the officers charged by the law of the United States with the supervision of the count.

Mr. Alden Avery (Record, p. 150), who distributed ballots bearing Mr. Field's name all day, does not know of any error being made by the ward officers of ward 18 in their count.

John Albree, the clerk of ward 18, called by the returned member, testifies (Record, p. 167) as to the regularity of the proceedings in that ward, and says that United States supervisors "personally scrutinized, canvassed, and counted all the ballots for Representative to Congress cast in said ward at said election."

This last witness and Mr. Cole, the warden, were examined *ex parte* by the returned member after the testimony in rebuttal had been put in; but even then not one word is elicited from either of them to show that the greatest care had not been used in counting the ballots in the ward, or to show that the slightest doubt or suspicion had ever been entertained by any person whatever in regard to the accuracy of the first count.

In these two wards, then, it appears, after calling all the persons of both political parties who would be apt to know of an error, if any had been made, that the only reason which can be alleged for doubting the accuracy of the original counts is that they did not agree with the aldermen's recount. What is there, then, in the aldermen's recount which is

entitled to be received in the place of the ward returns? It has been shown that this recount was not authorized by the State law, as interpreted by the State legislature; it has been shown that the result of the recount by the aldermen has never been legally certified to the clerk, that none of the proceedings in regard to it were in conform with the provisions of the law, and that it must stand or fall upon own merits, like any other unauthorized recount.

From this evidence it will be seen that the ward officers gave, in ward 18, Walbridge A. Field 1,410 votes, and Benjamin Dean 579 votes. The supervisors' return is exactly the same. In this ward, as in the other, the two supervisors, Mr. Swinson and Mr. Sullivan, testify that they counted the votes and scrutinized the ballots carefully, with the result indicated. There is no allegation on the part of any one that there was any fraud practiced at this ward, and there was no dispute even as to the correctness of the count, except as to the 25 votes of Walbridge A. Field, fourth district. It appears by the testimony of the clerk of this ward that the United States supervisors did personally scrutinize, canvass, and count the ballots for Representative in Congress cast in said ward. The supervisors so testify themselves, and are here to the truth of their count. Viewing their evidence, then, simply in the light of that given by official witnesses, it has more validity even in that view than their official return would have; for, as an official return, we might go behind that and show it to be untrue, but, as official evidence given in the contest by witnesses of acknowledged integrity and unimpeached character, and undisputed by any other evidence taken in the contest, we are bound to believe and accept as conclusively proof of their statements.

The foregoing evidence taken in the contest clearly establishes the truth of the ward returns in wards 16 and 18. But there is other evidence in the record tending to prove the same facts, and to this we must also direct attention. The law places the burden of proof upon the contestee to show that the ballots have not been tampered with between the ward counts and the recount by the aldermen. This has not been done. On the contrary, in ward 16 there was opportunity to tamper with the ballots in the ward-room after they were counted and before they were sealed.

C. B. Hunting, on page 165 of the record, testifies as follows:

Cross-int. 1. What was done with the ballots from time to time during the day as they were counted?—A. They were laid upon the table.

Cross-int. 2. When were they first put into the envelope?—A. In the afternoon; all of them; we would roll them up in hundreds, and in the afternoon we rolled some of the piles together, to get them out of the way, put a string around them, put them in the box, which sat behind the table; in the original box that was up for that purpose; same box they are in now. Dr. Weatherbee, the warden, sat together at the table, and had charge of the ballots. I can't tell exactly where they were laid on the window-sill or in the box, which sat there with cover open; window-sill and box were behind us and the table in front of us, and part of the ballots tied up in hundreds were put on the window-sill, the window being closed, after they had been counted.

Cross-int. 3. Who rolled the ballots up in hundreds?—A. I tied them up, and two or four counted them, and they would mark their names on the back of them, saying they were correct.

Cross-int. 4. You have stated, in answer to interrogatory 3, that the facts state your certificate were true; do you mean by that to say anything more than that you supposed the facts were true at the time you made the certificate, and that you put into the box what you supposed were all the ballots cast in ward 16?—A. No, what I supposed to be true at the time.

Cross-int. 5. All you mean to say, then, is that you put into the box the ballots found at the end of the day in the place where you had from time to time put the ballots which had been counted?—A. Yes, sir.

Mr. Babson, on pages 72 and 73 of the record, testifies that not only the chief marshal but the other marshals were behind the rails as much as an hour before the result was declared and after the counting was completed. His testimony is as follows:

Cross-int. 4. Where were the other marshals during the day?—A. I do not know all of them; those whom I do know were in the ward-room. I do not think any of them, with the exception of Mr. Wilkins, were behind the rails until the votes were counted, when I think some of them were.

Cross-int. 5. When was that?—A. From shortly before the polls closed until the vote was declared, which, I should say, was about half past five; polls closed at half past four.

It is certain that the ballots had become changed in the same way after they were counted by the ward officers. The ward officers return in words at length one ballot cast in ward 21 for Samuel D. Smith for member in Congress. There can be no doubt but that this ballot was cast and counted in said ward; but the aldermen's committee found no such ballot. What had become of it? The same is true of a ballot for A. Field in ward 19. What had become of that? The aldermen found one for Leopold Morse and two for Rufus S. Frost in ward 16, and one for Rufus S. Frost in ward 18. Also one for Francis M. Weld in ward 20, and one for Wm. A. Field in ward 16. How came they there? On pages 137 and 138 of the record Mr. Viles testifies to a box containing envelopes coming open while it was being handled and while in the city clerk's custody. One interrogatory and answer is as follows:

Cross-int. 5. As far as you can tell from the appearance of the box it might have been opened and all the ballots examined after it had been sealed by the committee, might it not?—A. Yes.

In addition to this, the testimony is that stickers or pasters (that is, the names of the candidates printed on separate pieces of paper) were used in great quantities and pasted over the names of the rival Congressional candidates. The testimony also is that these stickers or pasters came off in some cases. And there is a great probability that some did come off after they were counted in the ward-room and before the counting of the aldermanic committee.

On pages 152-'3 of the record Alderman O'Brien testifies that there were a few loose stickers in the boxes with only the names of the candidates on them, the office not being indicated, but the names did not appear to be the names of the contestant or contestee. In some of the wards the changes by the coming off of stickers between the two counts is so apparent that to state the facts is to prove the case. In ward 21 the ward count was:

For Benjamin Dean.....	547
For Walbridge A. Field.....	1,331

By the recount:

For Benjamin Dean.....	545
For Walbridge A. Field.....	1,333

By which Mr. Dean loses two votes and Mr. Field gains two, making a change of four votes against Dean. This can only be explained by the falling off of two stickers having Mr. Dean's name upon them, which would leave the ballots to be counted for Mr. Field.

In ward 24 the ward count was:

For Benjamin Dean.....	895
For Walbridge A. Field.....	1,361

By the recount:

For Benjamin Dean.....	893
For Walbridge A. Field.....	1,363

A difference of three votes against Mr. Dean. It is probable that one of these pasters came off which was over Mr. Field's name, and on one of the ballots the name of Mr. Field had doubtless been erased before the paster had been placed over the name. For these reasons the ward count is more reliable than the recount, and appears to be a true representation of the ballots actually cast.

Mr. McCrary (section 278 of his work on elections) says :

Before the ballots should be allowed in evidence to overturn the official count and return, it should appear affirmatively that they have been safely kept by the proper custodian of the law, that they have not been exposed to the public or handled by unauthorized persons, and that no opportunity has been given for tampering with them. If this is believed to be a rule founded upon the presumption that a fraud or a crime has been committed, the answer is that the rule does no more than to make choice between two presumptions of law, which in this instance come in conflict and cannot both prevail. In such case the question is, which is the stronger, the more reasonable, and the safer presumption? And inasmuch as the ballots are counted by the board of canvassers immediately upon the closing of the polls, and generally before there has been an opportunity for tampering, and when it cannot be known that the changing of a few votes will change the result, and in most cases by a board composed of friends of each of the competing candidates, it is believed that in the absence of all proof, in case of a conflict between the tally-sheets and returns on one side, and the ballots as they are found to be at some period after the election is over, and after the state of the vote as returned has been made known, on the other, the correctness of the original official canvass, made by sworn officers at the time of the election, should be presumed.

From the foregoing authority it will be seen that in order to sustain a recount the parties seeking the benefit of it must prove conclusively that between the time of the first and second counts there was no opportunity given for tampering with the ballots. It is not in this case for the contestant to show that the ballots might have been tampered with, but the contestee, who relies upon the recount, must establish affirmatively that the ballots had been safely kept, and that they had not been exposed to the public or handled by unauthorized persons. These facts do not appear affirmatively in the record, but, on the contrary, the proof is conclusive that the ballots were so placed as to render it possible for them to be handled and tampered with, and it is further shown by the evidence that by the use of pasters it was not only possible, but probable, that important changes were made in the ballots by the falling off of these pasters. This theory of the case may be assumed without impeaching the integrity of the aldermen who made the recount, for they not only counted the votes under their official responsibility, but submitted depositions in the contest to the effect that they had counted the ballots correctly as they found them. We may assume their count to be true, and that they did not perjure themselves when they swore to the correctness of this count, by considering not only the possibility as to the ballots being tampered with, but the undisputed evidence that certain ballots were cast and counted by the ward officers which did not appear in the count made by the aldermen.

In conclusion, referring to the count of the ward officers and aldermen it appears that in ward 18 Mr. Dean received 573 votes, or 6 votes less than the ward returns, and Mr. Field 1,413 votes, or 3 more than the ward returns, making a difference of 9 in his favor. In the two wards (16 and 18) Mr. Field has 20 votes in his favor by the aldermanic count. But by the evidence taken in the contest, going behind all the returns, it appears that the aldermanic count is not the true result of the election in wards 16 and 18, and if we assume the validity of the aldermanic count, except where it is disproved in the contest, we must give Mr. Dean the benefit of the evidence in these two wards. We shall then have as the result in the district, conceding Mr. Field the 25 votes cast

for "fourth district," and conceding for the sake of the argument the validity of the aldermanic count, except so far as disproved by the evidence—

	Votes.
For Benjamin Dean	9, 328
For Walbridge A. Field	9, 313

leaving a majority of 15 votes for Mr. Dean. Therefore, if this election is to depend upon the aldermen's count, except so far as disproved by the evidence in the case as to wards 16 and 18, Mr. Dean is elected by 15 majority; but if, as we contend, the ward returns, sustained by the United States supervisors, are to stand as the count provided by law, Mr. Dean is also elected by 5 votes. In either view of the case the contestant is elected. Your committee, therefore, recommend the adoption of the following resolutions:

Resolved, That Walbridge A. Field is not entitled to a seat in this House as the Representative from the third Congressional district of the State of Massachusetts.

Resolved, That Benjamin Dean is entitled to a seat in this House as the Representative from the third Congressional district of the State of Massachusetts.

JOHN T. HARRIS.
WILLIAM M. SPRINGER.
THOS. R. COBB.
E. JNO. ELLIS.
JAC. TURNEY.

Without at this time assenting to all the propositions made, I concur in the conclusion reached.

JERE N. WILLIAMS.

Without indorsing the argument of this report, I concur in the resolutions.

J. T. H.

Mr. MILTON A. CANDLER submitted the following as the

VIEWS OF THE MINORITY:

The undersigned, a minority of the Committee on Elections, to whom was referred the contested-election case from the third Congressional district of Massachusetts, having considered the same, make the following report:

The third Congressional district of Massachusetts comprises wards 13, 14, 15, 16, 17, 18, 19, 20, 21, and 24 in the city of Boston. The election for Representatives in Congress took place in that State on Tuesday, the 7th day of November, 1876, at which time Presidential electors, governor, and other State officers were elected.

The manner of holding elections for Representatives in Congress in the city of Boston, as prescribed by the State law, is as follows: One polling place is opened in each ward of the city, and the election is conducted by a warden, clerk, three inspectors appointed by the mayor, and three inspectors chosen by the qualified voters of the ward. The warden presides at the election, and it is the duty of the warden and inspectors to receive, sort, and count the votes, the clerk being allowed to assist in assorting and counting the votes.

The result being thus ascertained by the ward officers, public declaration is made thereof by the warden in open ward meeting before adjournment. The result having been recorded by the ward clerk, a certified copy of this record shall be by the ward clerk delivered to the city clerk, who shall forthwith enter the same in the city records. After all the ballots have been sorted, counted, declared, and recorded, they, together with the check-lists, are, in open ward meeting, secured in an envelope, sealed with a seal provided for the purpose, and with the indorsement of the warden, clerk, and a majority of the inspectors, giving the name of the office for which the ballots were cast, the ward in which cast, the day of election, &c., entered thereon, are transmitted forthwith by the constable in attendance at said election, or by one of the ward officers other than the clerk, to the city clerk. Certified copies of the ward records, together with "all the ballots given in by the voters of the wards and none others," and the check-lists, being in the custody of the city clerk, it is made the duty of the mayor and aldermen and the city clerk to examine the returns made by the returning-officers of each ward in the city, and if any error appears they shall forthwith notify said ward officers thereof, and require of them new and additional returns, which, together with the original returns, shall be included in their return of the result of the election.

"In counting the votes in an election no returns shall be rejected when the votes given for each candidate can be ascertained." After this examination of the returns of the ward officers by the mayor and aldermen, and the same have been recorded, it is the duty of the city clerk, within ten days of the day of the election, to transmit copies of the records of the votes, attested by him, certified by the mayor and aldermen, and sealed up, to the secretary of the Commonwealth. The secretary, upon receiving these certified returns under seal, shall transmit them with the seals unbroken to the governor and council, who, with five at least, of the council, shall examine them and issue his "summons" (certificate) to the person who shall appear from these returns to be chosen member of Congress. We have so far stated what must take place in every election, whether its fairness or correctness is questioned or not. If the correctness of the election as held in the wards is questioned then the duties of the board of aldermen as to the examination and correction of the ward returns are made more specific.

It is provided by sections 4 and 5, chapter 188, of the laws of Massachusetts, 1876, as follows:

SEC. 4. If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election. The board of aldermen, or their committee, shall thereupon, and within five days, Sunday excepted, next following the day of election, open the envelope and examine the ballots thrown in said ward, and determine the questions raised; they shall then again seal the envelope, either with the seal of the city or seal provided for the purpose, and shall indorse upon said envelope a certificate that the same has been opened and again sealed by them in conformity to law; and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen or their committee, shall alter and amend such ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

SEC. 5. The board of aldermen shall not declare the result of an election until the time specified in the preceding section for filing a request for a recount of ballots shall have expired, or in case of such request having been made, until the said ballots have been examined and the returns amended, if found erroneous, any provision in the charter of any city or in any act in amendment thereof to the contrary notwithstanding.

That is, when the board of aldermen shall be informed by ten or more qualified voters of any ward that there is reason to believe that the ward returns are erroneous, it shall be the duty of the board of aldermen or the committee thereof to examine the *ballots* thrown in the ward, and if the return is found to be erroneous to cause it to be altered and amended, and the returns thus amended are to stand as the true returns of the ward.

The facts in this case are that in the several wards comprising the district elections were held for a Representative in Congress in the manner provided by the laws of the commonwealth herein substantially set forth. Walbridge A. Field, the candidate of the Republican party, and Benjamin Dean, the candidate of the Democratic party, both residents of the district, were the persons for whom nearly all the votes were cast. In the several wards comprising the district after the sorting, counting, and declaration of the votes, returns were made to the city clerk of the result, together with the check-lists and ballots, in the manner prescribed by law. The following tabulated statement from these returns gives the results of the elections as held in the several wards:

Ward returns.											Totals.
	13	14	15	16	17	18	19	20	21	24	
Benjamin Dean	1,495	1,076	855	896	802	579	1,126	1,038	547	895	9,308
Walbridge A. Field	219	939	753	621	1,131	1,410	614	897	1,331	1,361	9,276
Walbridge A. Field (4th dist.)						25					25
A. Field							1				1
Field							1				1
Samuel D. Smith											1

At each of the ward meetings in the ten wards in this district were present two supervisors of election appointed by the judge of the circuit court of the United States for the circuit wherein is situated said election district, in the manner provided for by section 2011 of the United States Revised Statutes, and performed all the acts required by law to be done by them at *places for holding elections of Representatives in Congress*. These supervisors made and reported to the chief supervisor of elections for this district of Massachusetts returns of the votes cast for Representative in Congress. From these returns it appears that Benjamin Dean received 9,308 votes, Walbridge A. Field 9,276 votes, and that there were 25 additional votes cast in ward 18 for Walbridge A. Field, of fourth district, not counted. These returns differed from the returns of the ward officers in not giving the scattering votes for A. Field, — Field, and Samuel D. Smith, and giving Benjamin Dean, in the fourteenth ward, one vote less, and in the sixteenth ward one vote more than shown by the returns of those two wards.

It appears from the evidence that in wards 13, 15, 17, and 19 there was no scrutiny and counting of all the ballots cast, by each of the supervisors. In the remaining six wards it appears from the evidence that the supervisors personally scrutinized, canvassed, and counted all the ballots cast for Representative to Congress. It does not appear from the returns made by the supervisors that the votes cast in the several wards were by them counted, except in one ward, the 18th, and only in that ward does it appear when and how the counts of the supervisors were made. In that ward the ballots were first counted by the ward officers, and then by them were handed to the supervisors, who

separately and carefully counted them with the same result as that of the ward officers.

Within three days next following the day of this election, statements in writing by ten or more qualified voters of each of the wards of the district were made out and filed with the city clerk. These statements were the same in each ward, and were drawn up at the office of the chairman of the returned member's district committee, and were by him sent out for signatures. They were in form as follows:

To the city clerk of the city of Boston :

The undersigned, qualified voters of ward 13, in the third Congressional district, hereby state that they have reason to believe that the returns of the ward officers of said ward for member of Congress in said Congressional district at the election of November 7, 1876, are erroneous in that all the ballots cast for Walbridge A. Field as member of Congress were not counted and credited to him, and that more ballots were credited to Benjamin Dean as a member of Congress than were cast for him; and they ask for a recount of the vote of said ward for member of Congress, in accordance with the provisions of section 4 of chapter 188 of the acts of the year 1876.

These ward statements having been transmitted to the board of aldermen, as required by law, a committee of the board of aldermen, appointed by the mayor on the day preceding the election, opened the envelopes containing the ballots thrown in each ward, and counted said ballots with the result shown in the following table:

	Official count.										Total.
	13	14	15	16	17	18	19	20	21	24	
Benjamin Dean.....	1,497	1,100	855	889	803	573	1,125	1,035	545	893	9,316
Walbridge A. Field.....	225	950	751	625	1,131	1,413	614	891	1,333	1,362	9,316
Walbridge A. Field (4th dist.)						25					25
Wm. A. Field.....				1							1
Field.....							3				3
Leopold Morse.....				1							1
Rufus S. Frost.....				2		1					3
Francis M. Weld.....								1			1

This result having been reported to the board of aldermen by its committee and accepted by the board, the city clerk altered and amended the ward returns in accordance therewith, and entered the same with the resolution of the board in the city records, as follows :

CITY OF BOSTON.

Record of returns of votes given in the several wards November 7, 1876, for members of the Forty-fifth Congress.

[District No. Three, as amended.]

	Wards.										Total.
	13	14	15	16	17	18	19	20	21	24	
Walbridge A. Field.....	225	950	751	625	1,131	1,413	614	891	1,333	1,362	9,316
Benjamin Dean.....	1,497	1,100	855	889	803	573	1,125	1,035	545	893	9,316
Wm. A. Field.....				1							1
Field.....							3				3
Leopold Morse.....				1							1
Rufus S. Frost.....				2		1					3
Francis M. Weld.....								1			1

Resolved, That in the opinion of this board the twenty-five ballots cast in the eighteenth ward of this city, on the seventh instant, for Walbridge A. Field, of Boston, for member of Congress from the fourth district, were intended for Walbridge A. Field, of Boston, who was nominated and voted for as a member of Congress for the third district. It is therefore

Ordered, That in the certificate to be sent to the secretary of the commonwealth the number of ballots for Mr. Field be returned as follows: Walbridge A. Field, of Boston, had ninety-three hundred and twenty; twenty-five of which were headed Ward XVIII, and read as follows: "For Representative to Congress, fourth district, Walbridge A. Field, of Boston."

Passed.

S. F. MCCLEARY,
City Clerk.

IN BOARD OF ALDERMEN, November 15, 1877.

Within ten days from the day of the election, as prescribed by the statute, the city clerk transmitted copies of the records of the votes cast for members of Congress, as declared by the board of aldermen, to the secretary of the commonwealth, by whom they were duly transmitted to the governor and council. From this return it appeared that Walbridge A. Field had the highest number of votes cast in the election, and was chosen Representative in Congress from said district, and a certificate by the governor was issued accordingly. Within the time prescribed by the statutes of the United States notice of contest was served by Mr. Dean upon Mr. Field. The questions made by the notice of contest and the answer of the returned member and the evidence taken relate to the validity of the several counts, and do not go to the truth of the case further than as shown by the counts themselves.

In the eighteenth ward of the city twenty-five ballots were cast designating the Congressional office and candidate thus: "For Representative to Congress, fourth district, Walbridge A. Field, of Boston." These twenty-five ballots were counted for Mr. Field as Representative to Congress from the third district both by the ward officers and the board of aldermen, and are necessary to the election of Mr. Field. The contestant avers that these votes were improperly and illegally counted for Field. They were legally counted if they clearly indicate the office for which the person is designed, and the intention of the voter as to that person can be ascertained from the ballot. Evidence may not be received to contradict the ballot nor to give it a meaning when it expresses no meaning of itself; but if it be of doubtful import, the circumstances surrounding the election may be given in evidence to explain it and get at the intent of the voter. (McCrory's Law of Elections, p. 299.) The office to be filled was Representative in Congress. The words "fourth district" constitute no part of the designation of that office. The way it happened that the words "fourth district" had been printed upon these ballots was explained by the person printing them, that he had neglected to take from his printing-press the type containing these words, which had been used for printing ballots for Representative in Congress in the adjoining fourth district. Walbridge A. Field was the candidate for Congress in the third district; he resided in that district. There was no other Walbridge A. Field residing in that district or in the city of Boston; the ballots were cast in the eighteenth ward and third district, and by law could only be cast by persons residing in that ward and district. Clearly, then, from these ballots and the evidence showing by whom they were cast, and the circumstances under which cast, it appears that they were cast for Walbridge A. Field, one of the candidates for Congress in the third district for Representative in Congress from that district. The words "fourth district" not rendering uncertain the office intended to be designated or the person

voted for, we think that these twenty-five votes were legally counted for Field as Representative to Congress from the said third district.

The question left in this case, and the decision of which determines which of the parties to this contest is the duly chosen Representative from the third district of Massachusetts in the Forty-fifth Congress, is, which of the several counts made is the true count of the law?

The Constitution of the United States provides that "*the time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators.*" (Sec. 4, 1st art., Const. U. S.) Under this mandate of the Constitution there is prescribed in the State of Massachusetts, by the legislature thereof, a complete system of laws as to the places and manner of holding elections for Representatives in Congress and for ascertaining the result of these elections. That system is not complete in the holding of the elections in the wards of the cities comprising the districts and in the separate declaration of the votes in the wards.

Without the examination of the returns from the wards by the aldermen there can be no determination as to the result of the elections held in the several wards comprising the district. The board of aldermen is the only body that at any time is possessed of all the means necessary to ascertain who has been chosen a Representative in Congress for the district.

It is the duty of the mayor and aldermen and the clerk to examine the returns made by the returning officers of the several wards, and to compel the correction of any errors which may be discovered by them, and make record of the corrected returns. The ballots, voting-lists, and records remain in their possession.

"In counting (by the mayor, aldermen, and clerk) all the votes cast at an election, no returns of these votes from the wards shall be rejected when the votes given for each candidate can be ascertained." It is from the records of this board, attested and certified by them, that the governor is informed of the result of the election, and issues his summons to the person that appears from the records to have been chosen. (Sec. 15, 16, 17, and 22, Gen. Stats. Mass., chap. 7; Record, pp. 209, 210, and 211.) More distinctly is it provided under the act of the legislature approved April 26, 1876, hereinbefore set forth, that whenever statements in writing by ten or more qualified voters of any ward, stating that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, are filed with the city clerk, there shall be an examination of the ballots thrown in that ward, and a determination by the board of the questions raised. There can be no declaration of the result of an election by the board of aldermen until the expiration of the time for filing these requests for a recount of the ballots, or in case of such request there has been an examination of the ballots and an amendment of the returns, if erroneous.

These "amended returns," the result of the recount by the aldermen, are to stand as the true returns of the ward. It is insisted that the count made in this case by the aldermen was unauthorized by law, the statements in writing filed with the clerk being insufficient under the statute.

The purpose of the statute clearly was to compel an examination and count of the ballots cast in any ward whenever ten or more qualified voters should say to them in writing that they had reason to believe

at the ward returns were erroneous, and specify wherein they deemed them in error.

Statements from every ward of the district in writing, signed by ten more qualified voters from the wards respectively, saying they had reason to believe that the returns of the ward officers were erroneous, specifying "that all the ballots cast for Walbridge A. Field, as member of Congress, had not been counted and credited to him, and that more ballots were credited to Benjamin Dean as member of Congress than were cast for him," had been filed with the city clerk. The complaint

made is not as to the manner in which the election by the ward officers has been conducted; it does not go to any wrongful act of these officers, but is directed specifically to the ascertained result, the returns made by these officers. The object to be accomplished is to have an examination and count of the ballots by the board of aldermen. The complaint can only be as to the result of the count of the ballots by the ward officers.

This specification of error is to be by persons who were in no way connected with the count of the ballots; by persons who cast the ballots and who have reason to believe that there has been error in their count.

Statements by such persons could hardly be more specific than those made in this case, "that all the ballots cast for Walbridge A. Field had not been counted and credited to him, and that more ballots had been credited to Benjamin Dean than were cast for him."

It is the opinion of your committee that these statements were sufficient in law to authorize the examination and count of the ballots cast in the several wards by the board of aldermen.

The law of Massachusetts in terms declares that the returns as made by the board of aldermen, the count of the ballots by them, shall "stand as the true returns of the ward." This count is the final, ascertained, result of an election held in the manner prescribed by the legislature of the State for holding elections for Representatives in Congress, and must stand as showing the choice of the people of that district for that Representative, unless it be shown to the House of Representatives, judging of the election of one of its members, not to be true by evidence other than the ward counts, which are by this count reviewed and corrected.

Notwithstanding it appears from the evidence of the ward officers themselves and others who witnessed the manner of holding the election by the ward officers, and the counting by them of the ballots, that their counts were carefully made—and they have no reason to believe that they were not correctly made—they are insufficient to show that the subsequent count is untrue, and are incompetent to that purpose; for, by law, the count by the aldermen is one in review and a correction of these counts, and instead of them is to stand as the true return of the election. That rule of law that would allow this would be like unto one which would hold the reversed judgment of an inferior court evidence sufficient to show the reversing judgment of the superior court to be erroneous. To state the proposition is to show its unsoundness.

Supervisors of elections for each of the wards in said district were appointed by the judge of the circuit court of the United States for the district in which said district was situated. These supervisors were present at the several ward meetings at which this election was held, and afterward certified and made returns of the votes received by the two candidates to the chief supervisor.

According to these several returns Benjamin Dean received 9,308

votes, Walbridge A. Field received 9,276 votes, and there were "twenty-five additional votes cast for Walbridge A. Field, of fourth district, not counted."

Sections 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 of the Revised Statutes, which were enacted as amendments to an act approved May 31, 1870, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," are the provisions of law under which supervisors of elections are appointed and their duties prescribed.

These sections are as follows:

SEC. 2011. Whenever, in any city or town having upward of twenty thousand inhabitants, there are two citizens thereof, or whenever, in any county or parish, in any Congressional district, there are ten citizens thereof, of good standing, who, prior to any registration of voters for an election for Representative or Delegate in the Congress of the United States, or prior to any election at which a Representative or Delegate in Congress is to be voted for, may make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town, county or parish, is situated, their desire to have such registration, or such election, or both, guarded and scrutinized, the judge, within not less than ten days prior to the registration, if one there be, or, if no registration be required, within not less than ten days prior to the election, shall open the circuit court at the most convenient point in the circuit.

SEC. 2012. The court, when so opened by the judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the judge, and under the seal of the court, for each election district or voting precinct in such city or town, or for such election district or voting precinct in the Congressional district, as may have applied in the manner hereinbefore prescribed, and to revoke, change, or renew such appointment from time to time, two citizens, residents of the city or town, or of the election district or voting precinct in the county or parish, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election. (Sec. §§ 5521, 5522.)

SEC. 2013. The circuit court, when opened by the judge as required in the two preceding sections, shall therefrom and thereafter, and up to and including the day following the day of election, be always open for the transaction of business under this title, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time; and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court.

SEC. 2014. Whenever, from any cause, the judge of the circuit court in any judicial circuit is unable to perform and discharge the duties herein imposed, he is required to select and assign to the performance thereof, in his place, such one of the judges of the district courts within his circuit as he may deem best; and upon such selection an assignment being made, the district judge so designated shall perform and discharge in the place of the circuit judge, all the duties, powers, and obligations imposed and conferred upon the circuit judge by the provisions hereof.

SEC. 2015. The preceding section shall be construed to authorize each of the judges of the circuit courts of the United States to designate one or more of the judges of the district courts within his circuit to discharge the duties arising under this title.

SEC. 2016. The supervisors of elections so appointed are authorized and required to attend at all times and places fixed for the registration of voters who, being registered, would be entitled to vote for a Representative or Delegate in Congress, and to challenge any person offering to register; to attend at all times and places when the names of registered voters may be marked for challenge, and to cause such names registered as they may deem proper to be so marked; to make, when required, the list of either of them, provided for in section two thousand and twenty-six, and verify the same; and upon any occasion, and at any time when in attendance upon the duties herein prescribed, to personally inspect and scrutinize such registry, and, for purposes of identification, to affix their signature to each page of the original list, and of each copy of any such list of registered voters, at such times, upon each day when any name may be received, entered, or registered, and in such manner as will, in their judgment, detect and expose the improper or wrongful removal therefrom, or addition thereto, of any name.

SEC. 2017. The supervisors of election are authorized and required to attend at all times and places for holding elections of Representatives or Delegates in Congress, and for counting the votes cast at such elections; to challenge any vote offered by any person whose legal qualifications the supervisors, or either of them, may doubt; to be

in where the ballot-boxes are kept at all times after the polls are open until be cast at such time and place has been counted, the canvass of all votes polled completed, and the proper and requisite certificates or returns made, whether certificates or returns be required under any law of the United States, or any State, al, or municipal law, and to personally inspect and scrutinize, from time to time at all times, on the day of election, the manner in which the voting is done way and method in which the poll-books, registry-lists, and tallies or check-whether the same are required by any law of the United States, or any State, al, or municipal law, are kept.

18. To the end that each candidate for the office of Representative or Delegate may obtain the benefit of every vote for him cast, the supervisors of election and each of them is, required to personally scrutinize, count, and canvass out in their election district or voting precinct cast, whatever may be the intent on the ballot, or in whatever box it may have been placed or be found; to forward to the officer who, in accordance with the provisions of section two and twenty-five, has been designated as the chief supervisor of the judicial in which the city or town wherein they may serve, acts, such certificates and of all such ballots as such officer may direct and require, and to attach to the list, and any and all copies thereof, and to any certificate, statement, or return the same, or any part or portion thereof, be required by any law of the States, or of any State, Territorial, or municipal law, any statement touching the accuracy of the registry, or the truth or fairness of the election and canvass the supervisors of the election, or either of them, may desire to make or return which should properly and honestly be made or attached, in order that the result become known.

19. The better to enable the supervisors of election to discharge their duties, authorized and directed, in their respective election districts or voting precincts the day of registration, on the day when registered voters may be marked and challenged, and on the day of election, to take, occupy, and remain in such position time to time, whether before or behind the ballot-boxes, as will, in their best judgment, best enable them to see each person offering himself for registration or to vote, and as will best conduce to their scrutinizing the manner in which registration or voting is being conducted; and at the closing of the polls for the day of votes, they are required to place themselves in such position, in relation to the ballot-boxes, for the purpose of engaging in the work of canvassing the ballots, enable them to fully perform the duties in respect to such canvass provided and shall there remain until every duty in respect to such canvass, certificates, and statements has been wholly completed.

provisions of law were *not* enacted by Congress in pursuance of constitutional power to "make or alter" regulations as to the manner of holding elections for Representatives in Congress.

are not certainly to operate even to the supervision of an election a single polling place in a city or county which may constitute a part of an election district, but shall only operate when a certain number of citizens shall make known in writing to a United States Senator their desire to have the election "*guarded and scrutinized.*" The manner of holding such an election is in no way regulated.

officers are designated as "supervisors of elections." They are appointed by the judges of the Federal courts as instruments in the execution of "enforcing the rights of citizens of the United States to vote in several States;" not managers of an election, but guardians and managers of an election managed by others, officers of the States.

are to attend at all times and places for holding elections for Representatives in Congress, and for counting the votes at such election order that they may challenge votes and inspect and scrutinize the manner in which the voting is done, but they are not to receive or question upon the legality of any vote, or regulate the manner in which the voting is done. On the day of election and at the places of holding election they are to take, occupy, and remain in such position as will enable them to see each person voting, scrutinize the manner in which the voting is being conducted, and at the closing of the polls to put themselves in such a position in relation to the ballot-box for the purpose of engaging in the work of canvassing the bal-

lots, as will enable them to fully perform their duties in respect to such canvass herein provided, but they are not to be in position enabling them to receive a vote, conduct an election, or control a ballot-box.

Each of these supervisors is required "*personally* to scrutinize, count, and canvass each ballot in their election district cast;" not as a board of election managers, to ascertain the number of ballots cast and for whom cast, and as such board to make returns thereof to the State officer who shall certify that result, or the House of Representatives, who shall judge of that return; but each one personally is to scrutinize, count, and canvass each ballot cast in his voting precinct, and make "*such certificate and return of all such ballots*" as may be directed and *required* by the chief supervisor from whom he received his appointment. They make returns only of what they have seen in the management of the election, to the chief supervisor appointed by the judge of the circuit, "in order that the facts may become known." "Become known" through these supervisors, these witnesses for the courts having jurisdiction of the offenses created in these acts, enacted to "enforce the rights of citizens of the United States to vote in the several States of the Union, and for other purposes."

Further than the returns made, which do not in terms show a count made by these supervisors, except as to the returns from the eighteenth ward, the evidence does not show that the supervisors counted the votes in the wards comprising the election district. So that, in the determination of the value of those returns as evidence in this case, their only value is in their official character.

The undersigned, believing that they are not counts made and results ascertained in pursuance of any law made "to regulate the manner of holding elections for Representatives in Congress," hold that they are insufficient to set aside the result found in this case according to the law of the State of Massachusetts, the certified return of the board of aldermen.

It is averred by the contestant that the count by the aldermen, upon which rests the right of the returned member to his seat, was made by *three* members of the board of aldermen in private and not in the presence of the public; that it was made without notification to the contestant, or the supervisors of election, appointed in pursuance of the United States statutes, and that these supervisors were not *permitted* to be, and were not in fact, present at the recount of the ballots by the aldermen, and, as inference from these facts, it is averred that the count of the aldermen did not show the true number of votes cast for the parties to this contest. It is not insisted that because of these facts the count of the aldermen is void, but that they so discredit the count that it may not be set up as the true return of the election as against the counts made in the wards. The evidence shows that no notice of the examination and count of the ballots by the aldermen was given to the supervisors of the election or to either of the parties to the contest, and that none of these parties were present. The committee who made the count was appointed for this purpose by public action of the board of aldermen on the day immediately preceding that of the election, and it was appointed in pursuance of a public statute of the State.

There is no evidence that there was any exclusion of any person, supervisor or candidate, from the count. The count was made by the committee in one of the rooms of the city hall, and with the aid of the assistant city clerk and the clerk and assistant clerk of committees of the board of aldermen. At times during the count the city clerk and city attorney were present. The door of the room in which the count

was made was not kept locked. The count required the larger part of two days, and both parties knew it was to be made.

The count was made during the *time*, at the place, and in the manner required by law. There is no law requiring the presence of any person other than the committee, unless it be found in that regulating the duties of the supervisors of election.

The sole object of the act of Congress, of which the sections of the Revised Statutes hereinbefore set forth are a part, was to enforce "the right of the citizen to vote and to secure that vote to the candidate for whom intended." To that end it is provided that these supervisors shall attend at the *places* for holding the elections for Representatives, and counting the votes cast at such election, and to remain where the ballot-boxes are kept at all times after the polls are open until every vote cast at such *time* has been counted and the canvass completed. Evidently this only required the supervisors to be at the place where the election is held, in the *precinct* or *polling-place* for which they are appointed, and not at the place where the returns from all the precincts are carried for examination, recount, and consolidation.

At this place there is no vote which may be challenged, no ballot-box opened for the reception of votes; there is nothing which may be done by the supervisors appointed for a precinct to "guard and scrutinize" the election there held.

There being, then, no violation of law in the manner of the count by the committee of aldermen, and none requiring the presence at or the participation in this count by the twenty supervisors appointed, *two each* for the several *precincts* or *polling-places* in the district, we think that count is in no degree discredited.

We therefore find that the result of the election in the third Congressional district of the State of Massachusetts for a Representative to the Forty-fifth Congress, ascertained in the manner prescribed by the laws of that State, is that Walbridge A. Field received 9,320 votes and Benjamin Dean received 9,315 votes; and that the former, having received the highest number of votes, is duly elected.

We recommend the adoption of the following resolutions as a substitute for the resolutions reported by the majority of the committee:

Resolved, That Walbridge A. Field is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third district of Massachusetts.

Resolved, That Benjamin Dean is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third Congressional district of Massachusetts.

MILTON A. CANDLER.
FRANK HISCOCK.
J. M. THORNBURGH.
JNO. T. WAIT.
H. PRICE.

JOHN S. RICHARDSON vs. JOSEPH H. RAINEY.**FIRST CONGRESSIONAL DISTRICT OF SOUTH CAROLINA.**

Charges of intimidation, violence, and military interference and of irregularities and informalities at the polls.

Held, That violations of the election laws that are purely directory in their character, if no fraud be shown to have resulted therefrom, cannot vitiate an election. It is wholly different when mandatory provisions are violated. In the latter case the election is void.

It need not be that there is, at the time of voting, the presence of force or the present fear of actual bodily hurt; but the fear of harm, of social ostracism, of religious wrath if brought to bear upon the body of voters, or if exercised to any great extent, and if so general as to affect the result, and the general result cannot be ascertained from the returns, the election is void.

The sending of United States troops into South Carolina in October, 1876, the uses made of their presence produced a marked and controlling effect upon the election, sufficient to justify declaring void the election of November 7.

A minority can only elect where the majority with full opportunity to vote as they chose, unrestrained by undue influences, refrained through apathy or neglect from voting. But when undue influences have been brought to bear upon the mass of voters, and they have voted subject to these influences, although the full extent of these influences cannot be arrived at, the entire election should be voided, although a minority may have voted free from such influences.

This report was recommitted to the Committee on Elections May 18, 1878.

MAY 18, 1878.—Mr. ELLIS, from the Committee on Elections, submitted the following

REPORT:

The first Congressional district of South Carolina is composed of eight counties—Sumter, Darlington, Williamsburg, Georgetown, Horry, Marion, Marlborough, and Chesterfield.

At the general election held in that district on the 7th of November, 1876, John S. Richardson and Joseph H. Rainey were voted for to represent said district in the Forty-fifth Congress. According to the returns, as filed in the office of the secretary of state, the vote was as follows:

Counties.	Rainey.	Richardson.
In Darlington County	3,514	2,747
In Sumter County	3,849	2,389
In Williamsburg County	2,371	1,032
In Georgetown County	2,684	1,158
In Chesterfield County	2,981	1,632
In Marlborough County	1,909	1,941
In Marion County	2,502	3,140
In Horry County	593	1,628
Total	18,103	16,576

majority for contestee of 1,528 in the entire district. Upon this certificate of election was issued to him, and he was sworn in to occupy the seat in Congress from the first South Carolina dis-

in the legal time the contestant filed his protest and notice of claiming that certain counties of said district should be rejected as count for intimidation, violence, and military interference with election, and that certain polls in said counties should be rejected for various informalities, which are fully set forth in his notice of

but burdening this report with the notice of contest, which is on pages 1-11 of the report, the grounds upon which contestant's contest are substantially as follows:

That the Government of the United States without cause, other influence the result of the election in the interest of contestee Republican party, sent troops to many polling places in four of the first district, and that the effect of the presence of said forces of the United States was such as to greatly influence, if change, by intimidation, the result in said counties.

That the presence at the polls and the attendance at political meetings during the canvass of colored militia armed and organized, general arming of colored clubs and their threats against colored voters, created such alarm and intimidation as to materially affect the result of said election, and not wholly to change it.

That the intimidation and threats of social and religious ostracism and persecution made by colored Republican social and religious organizations materially affected and changed the result of the election in said counties.

Contestant urges the following grounds of objection to the counting of certain polls in certain counties, as follows:

Darlington County, as follows:

That the managers of election appointed for the various precincts established in said county did not comply with a condition precedent to their action as such managers, inasmuch as no oath taken and subscribed by any of them was filed in the office of the secretary of state, as required by law, there being at the time no clerk of the county duly qualified with whom said oaths could be filed.

That Federal officers (deputy marshals and others), intense Republican partisans, made use of the presence of troops in said county to intimidate electors, and at every poll in said county large numbers were overawed—some kept from voting altogether, and others forced to vote the Republican ticket against their will. That the State militia and other armed Republicans collected large numbers of arms and private arms at and near the points at which polls were opened at the polls established at Darlington Court-House, Society Hill, and Florence. The presence of arms at the polls, as stated in this specification, was with the knowledge (in one instance at least) upon the suggestion of deputy marshals of the State of America, all Republicans.

That at Manchester precinct the ballots cast were not counted according to law.

That at Concord precinct one William J. Andrews, who was candidate upon the Democratic ticket, and is returned as elected to a seat in said assembly, was and acted as one of the United States supervisors of election.

That at Wedgefield precinct one Mansfield McLaurin, who was appointed and clerk of the board of managers, did not take the oath of office prescribed by condition precedent to be taken by said clerk, and that a poll-list was not made at said precinct according to law.

That the poll at Johnston's Store precinct was not opened at the hour designated or for fifty minutes thereafter.

That Hampton Cain, who was appointed and acted as clerk of the board of managers at this precinct, did not take the oath of office prescribed by law as a condition precedent to be taken by such clerk.

That a poll-list was not kept at this poll according to law.

4. That the ballots cast at this precinct were not counted according to law, but the number of tickets were counted, and no account or tally-list of the ballots cast for any person or persons voted for was kept by either manager, supervisor, or clerk of the managers at said Johnston's Store precinct.

5. That the managers of this precinct did not proceed immediately at the close of the election to count the ballots cast, but did there, contrary to law, adjourn the board for some time, to wit, twenty minutes, before proceeding to count said votes.

1. That at Privateer precinct the managers did not open the poll at the hour fixed by law for opening the same nor for one hour and a half thereafter.

2. That the person who acted as clerk at this precinct did not take the oath of office prescribed by law for such clerk to take, and that no poll-list was kept according to law.

3. The managers of election at said Privateer precinct failed to administer to each and every person who voted thereat the oath required as condition precedent by law to be administered to each person offering to vote at said election nor was such oath taken by any person who voted at said precinct; and that a large number of persons to wit, two hundred and fifty-two, were then allowed to vote, and did vote without taking such oath.

1. That at Stateburgh precinct, one George Patterson, who acted as clerk of the board of managers of such poll, did not take the oath of office prescribed as a condition precedent by law to be taken by such clerk, and that a poll-list was not kept at said poll according to law.

1. That at Carter's Crossing precinct H. G. Shaw, who was not a manager, acted as clerk of the board of managers without taking the oath of office prescribed as condition precedent by law to be taken by such clerk, and that the poll-list kept at said poll was kept by him, and was not, therefore, such poll-list as was required by law.

That the board of county canvassers of said county did, contrary to law, open many of the boxes containing the ballots cast after said boxes had been sealed by the manager; that is to say, the boxes of the following precincts, to wit: Sumter No. 1, Privateer, Stateburgh, Providence, Rafting Creek, Spring Hill, Bishopville, Lynchburg, Shiloh, Mayesville, Johnston's Store, and Swimming Ponds; and that ballots deposited in some of said boxes, to wit, those of Rafting Creek, Stateburgh, and Privateer, were counted by said canvassers after opening said boxes as aforesaid.

That United States troops were stationed, immediately before and during such election, in said county of Sumter, to wit, at Sumter Court-House, and did intimidate, overawe, and force many persons to vote the Republican ticket and for the said Raine and prevent many other persons from voting for this contestant who would otherwise have voted for him.

That a large number of persons, to wit, eight hundred persons, who voted more than once, or who, though not qualified to vote, were allowed to vote and did vote at various polls in said county in said election.

That this contestant therefore, and for the reasons stated, asks and demands that the ballots cast at the said several polls in said county of Sumter shall be rejected and entirely excluded.

In Georgetown County

1st. In that the commissioners of election for said county met and organized as board of county canvassers on the 8th day of November, 1876, instead of the Tuesday next following said election, as plainly directed by the fifteenth section of chapter of the general statutes of the State.

2d. In that neither the chairman of the board of managers nor one of them so designated in writing by the board, did deliver to the commissioners of election a poll-list, the boxes containing the ballots, and the written statement of the results of the election in his precinct; and this is true as to each and every precinct in said county, contrary to the explicit directions of the third section of the act of 1872 (vol. Stat., page 171).

3d. In that the county board of State canvassers, as such, did receive from persons other than the several precinct-chairmen of board of managers, or one of them designated in writing, the poll-list, the boxes containing the ballots, and the statement of the result of the election at the several precincts in said county.

4th. In that said board refused to receive the protest of the citizens of the county and consider the same, with the proofs offered to sustain them, against the illegal conduct of the said election at the Santee, Brown's Ferry, Brooks Green, and other election precincts in said county.

5th. In that said board actually refused to count the votes of the county, as prescribed in the sixteenth section of chapter 8, general statutes, page 31.

6th. In that, having refused to count the votes of the county, the said board nevertheless violated the sanctity of the seals of the boxes containing the ballots, and took from said boxes certain papers contained therein.

7th. In that the said election was illegally conducted in almost every respect required by the laws of the State, and the refusal of said board to hear the citizen in defense of his rights, based upon proofs of said illegality, is a blow at the purity of elections, the safeguard of the elective franchise, and at liberty itself, and so utterly inconsistent with the principles of a government of the people, for the people, as to merit the rebuke of every functionary of the government whose duty it is to pass upon their conduct.

8th. In that the poll-list, the boxes containing the ballots, and the statement of the result of the election at the several precincts in the said county, were kept and transported after the election by persons other than the chairman of the board of managers, or one of them, designated in writing before the said poll-lists, boxes, and statements were delivered to the county canvassers.

1st. In that at Grier's precinct the board of managers of election were not properly organized as such as the law requires; they were not sworn as managers, nor was the clerk of the board sworn according to law.

1st. In that at Birdville precinct the board of managers of election were not properly organized as such as the law requires; they were not sworn as managers, nor was the clerk of the board sworn according to law.

1st. In that at Santee precinct the board of managers of election was not properly organized as such as the law requires; they were not regularly sworn as managers, nor was the clerk of the board sworn according to law.

1st. In that at Brown's Ferry precinct the said poll was managed and conducted by only two managers, one only of whom was sworn to conduct and manage the said election according to law in such case made and provided.

1st. In that at Brown's Ferry precinct the board of managers of election was not properly organized as such as the law required; they were not regularly sworn according to law.

2d. In that the ballot-box from the Brown's Ferry poll was carried by one of the managers of election to the house of J. Hawley Jones, who is a candidate (upon the Republican ticket, and a political friend of said Rainey) for election as county commissioner, and remained there some time before being turned over to the commissioners of election. That said box, when turned over, had every indication of having been tampered with.

1. In that at Brooks Green precinct the board of managers of election were not properly organized as such as the law requires; they were not regularly sworn as managers, nor was the clerk of the board sworn according to law.

Because there was at the polls above mentioned, to wit, at Santee, Brown's Ferry, Brooks Green, Grier's, and Birdville, intimidation of the electors (both before and during the election) who desired to vote the Democratic ticket, by threatening and violent language and conduct, to such an extent that the electors were prevented from giving free expression of their choice of candidates in casting their votes, to wit, at least six hundred voters. Because a large number of persons, to wit, five hundred persons, who voted more than once, or who, though not qualified to vote, were allowed to vote and did vote at the various polls in said county at said election.

The contestant, therefore, and for the reasons stated, asks and demands that the ballots cast at the said several polls in the said county of Georgetown shall be rejected and entirely excluded.

In Williamsburgh County:

1st. Because there was inaugurated in said county an extended terrorism, especially over colored electors, on the part of the colored citizens of said county, both male and female, all Republicans, and the political friends of the said Rainey, resulting in the intimidation of great numbers of colored electors, and in preventing the said electors from voting the Democratic ticket and from voting for this contestant.

2d. Because the political friends of the said Rainey, at various voting-precincts in said county, on the day of said election, and on various days preceding said election, by threats and exhibitions of arms and force, intimidated and compelled colored electors to vote the Republican ticket and for said Rainey, and intimidated and prevented other colored electors from voting for this contestant.

3d. Because a large number of persons, to wit, three hundred persons, voted more than once, or who, though not qualified to vote, were allowed to vote and did vote at the various polls in said county at said election.

4th. Because a poll was opened at Levy's store, in said county, on the day of said election, without legal authority for opening or holding said poll, and many ballots, to wit, five hundred and forty ballots, were received and counted as coming from said illegal poll.

This contestant, therefore, and for the reasons stated, asks and demands that the votes polled at said Levy's store, and the said illegal votes in said county of Williamsburgh, be rejected and entirely excluded.

Your memorialist claims :

1st. That he, the said John L. Richardson, has received a majority of all the legal votes cast at the said general election for the office of member of Congress from the first Congressional district of South Carolina to the Forty fifth Congress of the United States, and that he is entitled to take said seat.

2d. That the said Joseph H. Rainey has not received a majority of the legal votes cast for said office at said election, and that he is therefore not entitled to take said seat in said Congress.

3d. That the said Rainey has not the *prima facie* right, by virtue of the certificate he holds, to take said seat.

4th. That in the event your honorable body shall hold that this contestant is entitled to said seat, your memorialist claims, for the various reasons set forth in grounds of contest, that said seat shall be declared vacant.

5th. Contestant further objects to the regularity and legality of the returns, and claims that the certificate of the contestee based thereon is also irregular and illegal.

To these grounds, and the notice of contest based thereon, the contestee pleads general and special denial, and then sets up counter-charges of intimidation, threats, and violence at various polls in various counties in the district upon the part of contestant and his political friends whereby he alleges he was deprived of many hundred votes; and especially objects that the vote of Horry County was not returned conformity with law. Some other vague allegations of voters having repeated their votes are also charged by him as having been done at various polling-places to his prejudice.

It may be as well right here to dispose of the counter-charges of the sitting member. The committee fail to find them sustained by proof. Indeed they are not insisted upon in the very able and elaborate arguments, oral and written, presented by the distinguished counsel for the contestee.

The eight hundred pages of printed testimony fail to show a single instance of intimidation or attempted intimidation upon the part of the contestee and his political friends. The evidence shows close, compact organization upon the part of the Democrats; that they had the usual demonstrations; that they resorted to the machinery usual in political campaigns. True some of the clubs gave certificates to colored men for their membership in Democratic clubs, and it was understood that such as bore these certificates should have preference for employment and for renting lands.

The following is a sample of the avowal of the Democrats in this connection, and is taken from Record, page 27:

SUMTER, S. C., October 25, 1876

The Democratic executive committee recommend the adoption of the following pledge.

J. D. BLANDING,

Chairman Democratic Executive Committee

A. W. SUDER, Secretary.

THE STATE OF SOUTH CAROLINA:

We, the undersigned, citizens of Sumter County, hereby pledge ourselves (each himself) that we will not assist or extend any favor to any person of either race or color who shall vote for the Republican State or county ticket at the election on November next; and that we will, in all business transactions, give the preference to such persons as shall vote the Democratic State and county ticket at said election.

The committee do not justify or vindicate this method of influencing voters. It is wrong, and should be condemned. No influences other than appeals to reason and conscience and the peaceful attempt to enlighten the mind and influence the judgment of the voter should ever be resorted to. The party that threatens with loss of employment entailing want, privation, and suffering, is just as culpable as one

who resorts to bribery to accomplish political ends. These preference pledges and threats are also in direct conflict with section 5509 Revised Statutes United States. It is a sad commentary upon the political conduct of our times that such influences as were sought to be exercised by these pledges are in frequent, almost universal, practice in every section of the country.

In the vast factories and founderies and machine-shops, even in navy-yards and custom-houses and Government departments, such influences have been openly practiced and tolerated for years. But neither two wrongs, nor a thousand, can make a right, and custom can never give legal sanction to practices so foreign to the spirit of free suffrage.

With regard to the case at bar, the proof shows that but few clubs in the contested district adopted these pledges, and none carried them out. But had they been universally adopted and carried out it would but strengthen the conclusion arrived at by your committee, and furnish additional reason for declaring the election *not* a full or free election, and therefore void. The committee conclude this point by declaring that in their judgment the charges of intimidation contained in the reply of the sitting member are not sustained.

In considering the grounds upon which contestant bases his claim to be seated, we will take them up in the inverse order in which they are hereinbefore set forth.

It will be remembered that the fifth ground of contest, as numbered in this report, goes entirely to the *certificate* of the sitting member.

This objection might have been properly urged upon a contest for the *prima facie* right. In such contests, the certificate is the sole consideration. But the House of Representatives passed upon the whole question raised by this objection last October, when, at the extra session, it voted to seat the contestee upon the *prima facie* right. It can form, therefore, no proper question in this contest upon the merits, and is therefore not entitled to further consideration.

The fourth ground of contest, in the order of this report, embraces numerous objections to the counting of numerous polls in various counties of the contested district.

The irregularities and informalities of this class which the contestant regards as fatal to the vote in different counties and precincts of the district are the following: A failure of one or more precinct officers to take the oath of office prescribed by law; a failure of one or more of the precinct officers to file the official oath in the office of the secretary of state; a failure to appoint a clerk of election according to law; a failure of the precinct officers to organize as a board; a failure to keep a poll-list according to law; a failure to open the polls at the hour fixed by law; a failure of the clerk to take the oath of office prescribed by law; the fact that a ballot-box contained more than one opening; the circumstance that but one United States supervisor attended the election; an adjournment of the polls during the day; a failure to keep a tally-list; a failure to count the ballots immediately after the close of the poll; a failure to administer the oath prescribed by law to the electors; the fact that the poll-list, ballot-boxes, and statements of results were not delivered to the county canvassers by the chairmen of the precinct boards; the refusal of the county canvassers to entertain and decide upon protests presented by electors; the fact that the election was conducted by two instead of three precinct officers, and the fact that the county canvassers opened the ballot-boxes when they canvassed the votes.

These objections are most elaborately set forth and discussed by the

contestant and the counsel for contestee. It will be observed that most of the objections relate to violations of the election law that are purely directory in their character. Their violation, if no fraud be shown, have resulted therefrom, cannot vitiate an election. It is wholly different when mandatory provisions of an election law are violated. In the latter case the election is void.

But the voter is not to be deprived of his right, and the citizens are not to lose the result of an election fairly held because of some unimportant omission of form, or of the neglect, carelessness, or ignorance of some election officer, or the failure to carry out some unimportant direction of the law. (*Vide* McCrary's Law of Elections; Coolidge v. Const. Limitations; *Botts v. Jones*, 1 Bartlett, 73; *People v. Cook*, 67; *Taylor v. Taylor*, 10 Minn., 107; *People v. Cook*, 14 B. & C., 259; *Barnes v. Adams*, 2d Bartlett, 764; *Blair v. Barrett*, 1 B. & C., 313; *Cox v. Strait*, decided in Forty-fourth Congress, and other authorities.)

Your committee find that the irregularities complained of, even true in every particular, are infractions of directory provisions of the law and are unaccompanied by proof of fraud, and ought not, therefore, to vitiate the election of themselves. But there being in this case graver and more serious causes of contest the committee do not consider it necessary to further consider the various irregularities complained of in the third ground.

We come now to consider the more serious issues presented by this case, which are in the order of this report set forth as contest grounds first, second, and third grounds of contest, and may be classed under the general head of intimidation. Under the evidence in this case may be divided into three kinds:

1st. The intimidation exercised by the Government of the United States through its military power, in sending troops into the electoral districts, stationing them at or near the polls.

2d. The terrorism produced by the armed colored Republican clubs and militia.

3d. The religious and social intimidation produced by the threats, social and religious ostracism and persecution, on the part of the colored Republican clubs and churches, upon the colored people who desired to differ from them politically.

And for the purposes of a better understanding of the questions now under consideration it is necessary to inquire very briefly into the political and civil condition of South Carolina and trace the causes which led to the extraordinary political campaign in that State in 1876.

Under the reconstruction acts a band of adventurers, pandering to the passions and prejudices of the colored race, representing, or professing to represent, both the Government of the United States and the Republican party—the one having devised the idea of the freedom of the negro and the other having enforced the idea, inflaming the minds and hearts of the colored race, a race long in bondage and unused to political thought and action, and not wise enough to see that the wily adventurers were using them for their own base ends—succeeded in getting possession of every department of the government of unhappy South Carolina. Then began the sickening scenes of that régime of theft and robbery, that period of misrule and plunder which constitute in our history its saddest picture.

Under the new régime a mob of men assembled as a legislature, individuals composing which, with a few exceptions, were unable to read or write, corrupt at heart, intent only upon such legislation

would afford them plunder, imposing upon the people writs of confiscation under the name of taxation, selling their legislative votes and influence as coolly as the tradesman barter his wares, deaf to every interest of the stricken State, heedless of the protestations of the taxpayers and property-owners, callous and careless of every voice and interest, save the voice of avarice and the interest of their insatiate greed.

Judges, under this *régime*, went upon the bench, for the most part ignorant and venal, who regarded their right to decide in causes before them as so much personal property to be sold to the highest bidder.

Governors, under this strange *régime*, ascended the executive chair, whose sole aim was to get the largest share in the wholesale plundering that was going on all around them, and who regarded their signatures to any bill before them and their right to appoint officials as so much merchantable assets that they might dispose of to their greatest personal advantage.

A militia was organized, composed of one race exclusively, and government arms were placed in their hands, and they were taught as the very first duty of the South Carolina militiaman, the highest creed of their code, hatred and distrust of the white man.

Representatives and Senators without ability, character, or honesty came here to fill the places of the Calhouns, the Rhettts, the Hammonds, the Lowndeses, who have immortalized the eloquence and genius and statesmanship of South Carolina.

In order that the work of plunder and misrule might go on, it was necessary to keep the people of the great North ignorant of the real condition of affairs, to make that people believe that the people of South Carolina were still rebellious, still filled with revenge, still resisting the will of the Government with regard to the emancipation and enfranchisement of the colored race; for well they knew that if the real truth in regard to the condition of affairs in the plundered State ever reached the American people there would come such a change of men and measures as would forever check their career of crime and end their work of spoliation.

To foment strife between the races; to array black against white; to invite the one to outrages which the other avenged with the strong hand; to import, as Ex-Governor Moses has recently confessed, roughs and rowdies from Northern cities and array them in the weird garb of the Ku-Klux Klan, and then cause them to commit outrages which were charged upon the white race; to arrest white citizens upon charge of these outrages, and convict them by perjured testimony before hostile juries and judges; to make of the State a vast mint, and of the blood and tears and sorrows of both races the bullion whereof was continually coined the newest and most valuable political capital; such was the government and such the "love's labors" of the governors and rulers of South Carolina.

And, saddest of all to relate, the soldier of the United States was at intervals employed to guard, to protect, to guarantee this the most monstrous crime in the name of human government that ever stained earth or shocked high Heaven.

The debt of the State grew larger and more onerous, values shrunk, space, taxation increased, labor was demoralized and disorganized, and universal bankruptcy and social and moral ruin threatened the people of the entire State.

Such was the condition of affairs in 1876 when the political campaign opened. The white tax-paying people of the State knew that they could

not carry the State and bring back the rule of honesty and law on a large number of colored men joined and co-operated with them. Hence they nominated their purest man for governor, one whose name was the guarantee to every man in South Carolina that he would keep to the letter every pledge he made.

The campaign was to be one of conciliation and kindness toward negro, a great effort to win him over to the side of good government and honest officials. The platform of principles put forth by the supporters of Hampton were broad, catholic, liberal.

The following, taken from report, pages 26 and 27, illustrates the temper and tone of the Hampton party :

Resolved, That we organize ourselves into a Democratic club, to be known as 'Sumter Democratic Club;' that in order to do so we enroll our names, and proceed to elect a president, two vice-presidents, a secretary, and a treasurer; that the purpose for which we organize are :

- 1st. To put ourselves in accord and communication with the national Democratic administration.
- 2d. And, as of the highest importance to us, to secure an honest, fair, and economical administration in our county and State affairs; and to effect this end we pledge ourselves to abide by the action of the party as expressed in State and county convention.
- 3d. To maintain the equal civil, political, and religious rights of all citizens, without regard to their color or previous condition.
- 4th. That in the reform we seek, looking to the welfare and interest of our people, *honesty* and *fitness for office* shall be the first consideration.
- 5th. That with this end in view, and upon this broad platform, we invite all our fellow-citizens to unite with us.

Also the following, taken from report, pages 33 and 34 :

OFFICE SUMTER COUNTY DEMOCRATIC EXECUTIVE COMMITTEE,
Sumter, S. C., October 30, 18

The Democratic executive committee of Sumter County urges all Democrats to obey the following instructions :

1. To avoid all measures of intimidation, particularly as to firing of guns and blowing of horns on the night before and during the election. The party is solemnly enjoined, by all its protestations, to a peaceful election. Demonstrations of a peaceful character, to keep up our own spirits and show our numbers and all moral force should be brought to bear to the utmost extent.
2. To exercise strict vigilance over the votes and the polls, and by all means be at the voting-precinct in full force before 6 o'clock Tuesday morning.
3. To look out especially for repeaters and the putting in of double tickets, keep a statement of such cases, and report same to these headquarters.
4. To keep one of our lists of votes and of the state of the polls, and report to me immediately after the box is closed. Let there be no delay, as all protests must be made at once.
5. Send in full reports from each poll immediately after the votes are counted.
6. Each Democratic manager is requested, in person, to hand me, on Wednesday morning, a copy of the official statement of the count of his poll.
7. Look out for all improper practices of our opponents, and be prepared to expose them if necessary.
8. Let it be publicly understood that the Democratic executive committee will punish all persons who vote illegally.

JAMES D. BLANDING,
Chairman Democratic Executive Committee

Peace, harmony, and conciliation were the watchwords of the campaign and its spirit as from the party of Hampton toward the colored race.

In this spirit the Democratic conventions in many counties nominated tickets composed equally of white and colored men; colored clubs were organized; colored men were welcomed in Democratic processions at Democratic meetings, and the candidates of the Democratic party from governor down, uttered from the stump the most conciliating

age. Governor Hampton's campaign throughout the State was an ovation, in which colored and white men joined, and perfect peace and tranquillity reigned in the State. (*Vide* evidence of Hampton, Conner, Wallace, Hayne, McMasters, Moise, R., pp. 242 to 249, and many others.)

Under these influences the colored people began to desert the Republican party and to join the Democratic party in large numbers. Many of the better class of colored men were already ripe for such a movement, having been disgusted by the lawless and infamous rule of the Republican officials, and being weary also of strife and contention with their white fellow-citizens.

The causes, too, which had led them in the earlier days of their enfranchisement to herd in mass with the Republican party were becoming less apparent. The colored man was coming to feel more secure in the perpetuity of his civil and political freedom and less distrustful of his white neighbors, and he was willing now to trust the government of the State and the execution of its laws to the hands of white men.

The campaign by the middle of October showed the most tremendous exertions and the utmost enthusiasm and confidence of success on the part of the Democrats, and weakness, dismay, and demoralization on the part of Chamberlain and his Republican followers.

Dismayed at the thought of defeat, which suggested not alone the wrenching of plunder from their grasp, but also the possible punishment of many of the plunderers and spoliators, the Republican leaders resorted to the most desperate means to stem and reverse the mighty tide of popular feeling that was running so strongly against them.

They counseled together and resolved to pursue the policy of wholesale intimidation against those colored people who dared to oppose them, and to procure, if possible, the bringing of troops into the State. The latter was necessary to their ends for two reasons: First, to prevent the white clubs from protecting the colored Democrats; and, secondly, to overawe and impress the ignorant minds of the colored people with the idea of power, and that the military arm of the Government was on the side of, and to be used in behalf of, the Republican party. The process of intimidation by Republican organizations against colored Democrats was to be effected, first, by threatening, intimidating, and maltreating them, and terrorizing them by means of armed colored organizations, and, secondly, by bringing to bear upon them the fear of social and religious ostracism.

It will not be denied that these modes of electioneering are against the spirit of free institutions and against the laws of the United States. In giving to the citizen the right to vote at all, the right to vote as he chooses, free and untrammelled, was necessarily included. It does not require any active constraint of the body to make out a case of intimidation. It need not be that there is at the time of voting the presence of threats, or of force, or the present fear of actual bodily hurt. The genius of free institutions demands that the mind as well as the body shall be free to exercise the elective franchise as the voter may see fit. The fear of bodily harm, the fear of social ostracism, the fear of religious wrath, if brought to bear upon the body of voters, or if exercised to any great extent, mar the purity and destroy the freedom of elections, and if it be so general as to affect the result, or if from it the real result cannot be ascertained from the returns, the election is void. McCrary declares (p. 328, Law of Elections):

The freedom of elections is of the utmost importance. The law justly regards all attempts to interfere with the electors in the peaceable and quiet exercise of their rights, or to improperly influence men against their judgment or desire, as a crime.

Under this rule, most, if not all, of the States have enacted statutes punishing the crime of bribery at elections, and the laws of the United States punish as crimes any undue influence, by threats, violence, intimidation, upon the mind of the voter. But, again, Judge Coolidge in his work on Constitutional Limitations (p. 614), declares:

To keep every election free from all the influences and surroundings which bear improperly upon it, or might impel the electors to cast their suffrages other than as their judgments would dictate, has always been a prominent object in our legislation.

Again:

If the violence and intimidation has been so extensive and general as to render certain that there has been no fair and free expression of popular will by the body of the electors, then the election must be set aside, notwithstanding that in some of the precincts and counties there was a peaceable and fair election. (2 McCrary's Law of Elections, p. 326.)

The laws of the States and of the United States, the spirit of our government, the laws and precedents of England and English common law tend to the principle that the elector shall vote and vote according to the dictates of his judgment, untrammelled and uninfluenced by any improper influences. Not only has intimidation by violence and the presence of armed troops at or near the polls, or of armed forces other than troops, and bribery, the promise of advancement, the threat of electors to influence their votes been held as causes that interfere with the freedom and purity of elections, but most of the States have laws which forbid courts to be held, or process served on election day, or militia musters to take place, accounting that these might be means of intimidation or of improper influence. A great English law writer who is standard authority upon the common law, has written that it is essential to the very existence of Parliament that elections should be free; wherefore all undue influences on electors are illegal." (1 Fisher's Law, p. 177.) And in a recent case which arose in Canada, Mr. Justice Ritchie said:

The rights of individual electors are the rights of the public. * * * The policy of all free constitutional governments in which the electoral principle is an element (at any rate in the British constitution) is to secure freedom of election. * * * A violation of this principle is equally at variance with good government and subversive of popular rights and liberties. (*Brassard et al. v. Langevin*, Supreme Court, Canada. Decided January, 1877.)

This case was one of controverted election. It arose from the case of Charlevoix, in which an election for member of the Canadian Parliament was held in January, 1876. The respondent was declared elected. His election was contested, upon the ground that "undue" spiritual religious influence had been exercised by the priests of certain parishes in the county, under the ninety-fifth section of the election act of 1874. The section is as follows:

SEC. 95. Every person who, directly or indirectly, by himself or by any other on his behalf, makes use of, or threatens to make use of, any force, violence, or restraint or inflicts or threatens the infliction, by himself or by or through any other person, any injury, damage, harm, or loss, or in any manner practices intimidation upon any person, in order to induce or compel such person to vote or to refrain from voting, or on account of such person having voted or refrained from voting, at an election, or who by abduction, duress, or any fraudulent device or contrivance in any manner prevents, or otherwise interferes with the free exercise of the franchise of any person, or thereby compels, induces, or prevails upon any voter to give or refrain from giving his vote at any election, shall be deemed to have committed the offense of undue influence.

The proof was that the respondent was supported by all the priests of the Roman Catholic Church, and that from their pulpits one

had declared that to vote against respondent and for his opponent "was a grave sin, a matter of conscience." Another priest characterized such a vote as a "mortal sin." Another said that with "that party (the party opposed to respondent) in power, we would wade in the blood of priests; that the horrors of the French revolution would be re-enacted; that, to prevent these misfortunes, liberalism must be crushed by the people and the clergy." Another declared to his flock "that it was a sin to vote for the liberal party, and that at the hour of death those who voted for that party would regret it." Another said, "Whoever votes for Mr. Tremblay (the opponent of respondent) would be guilty of a grave sin, and if he died after so voting he would not be entitled to the services of a priest." There was no proof that respondent had incited these sermons. But the court had no difficulty in determining the question of agency, and said:

Decisions in England, the election law of which is identical with ours, and those rendered in Ontario and Quebec, lay down the principle that every person who, in good faith, takes part in an election for a candidate with his consent, becomes *ipso facto* an agent of the candidate. Upon that point there can be no doubt; and the election of a prominent member of Parliament was annulled in consequence of the excessive zeal of his agents.

All these sermons [said the court], accompanied by threats and declarations of cases of conscience, were of a nature to produce in the mind of a large number of electors of the county, compelled to hear these things during several consecutive Sundays, a serious dread of committing a grievous sin and that of being deprived of the sacraments. There is here an exerting of undue influence of the worst kind, inasmuch as these threats and declarations fell from the lips of the priest speaking from the pulpit in the name of religion, and were addressed to persons of little instruction, and generally well disposed to follow the counsels of their curés. I can conceive that these sermons may have had no influence whatever on the intelligent and instructed portion of the hearers; nevertheless, I have no doubt but these sermons must have influenced the majority of persons void of instruction, notwithstanding that by reason of the secrecy in voting by ballot it has not been possible to point out more than six or eight voters as having been influenced to the extent of affecting their will. According to the testimony of over fifteen witnesses, a very large number changed their opinion in consequence of this undue influence. I may here state that in like cases, to annul an election a large number of cases of undue influence by a candidate, or an agent, is not required, and that one single case, well proved, suffices, although the candidate availing himself of it may have had an overwhelming majority.

Taking the evidence as a whole, it appears clear that a general system of intimidation was practiced; that as a consequence undue influence was exercised and the electors did not consider themselves free in the exercise of their elective franchise. *Vide* Mayo election case, 1857; Longford election case; Galway cases; case of county of Bonaventura.

The principle of all the decisions in all these cases is that the priest must not appeal to the fears of his hearers, nor say that the elector who votes for such a candidate will commit a sin or incur ecclesiastical censures or be deprived of the sacraments. And the court annulled the election and declared it void.

The committee have quoted extensively from the decision in this case inasmuch as the principle it lays down as well as the principle of the authorities it cites is applicable to some extent to the case at bar.

The colored race of the South, through no fault of that race—rather let it be written by its misfortune—is ignorant and to some degree superstitious. A strong vein of religious superstition runs through the character of that race. Most of them are members of churches, and the authority of their priests and preachers is almost absolute in all social and religious matters. Emancipated but a short time ago, dreading above all things a return to slavery, ignorant of the lasting character of that charter which gave to him his liberty, fearful that some change may relegate him to his former condition of servitude, with but little will of his own, depend-

nt for his social and political guidance upon his spiritual advisers of his own race or the counsels of those of the dominant race who profess utter sympathy with all his passions and prejudices, the colored race of the South constitutes an element most liable to be influenced by the arts of the demagogue or the chicanery and hypocrisy of priestcraft. To keep the colored man in ignorance, to pander to his fears and hopes, his passions and prejudices, to separate him from the influences of his former masters, has been the great object with those bad men who have been his counselors, advisers, and political taskmasters through the past ten years. They never appeal to his reason or judgment.

They hold up before his excited imagination the horrors of a return to slavery, the deprivation of his social, political, and religious privileges; they teach him that the white man is his enemy; they corrupt and utilize the authority of the colored preachers, and threaten with loss of church privileges, the ostracism from society, the absolute severance of the marital tie, those who act or vote against their will.

The record in this case discloses a condition of moral, social, and religious intolerance and intimidation exercised by the adherents and political friends of the sitting member in the first Congressional district of South Carolina that renders the idea of freedom of thought and opinion, the idea of free political action, on the part of the colored race, an utter mockery and delusion.

Preachers preached against the Democratic party. Threats of "turning out of the church" those who acted and voted with that party, threats of divorce from wife and separation from children, threats of social ostracism, were indulged throughout the entire district. Colored women assaulted and heaped epithets upon those men of their own race who dared to act with the Democratic party. Colored men were told that here was for them no social, moral, or religious existence or affiliation with their own race if they acted or voted otherwise than in obedience to the behests of the Republican leaders. It is even shown in the record that the sitting member declared that all colored men who acted with the Democratic party "should be treated as enemies." And this feeling and these appeals were not confined to any particular or isolated community or portion of the district, but existed and were exercised throughout the entire district. Your committee feel constrained to declare that undue, illegal, and improper influences were brought to bear upon the vast mass of colored voters throughout the first Congressional district of South Carolina, and while the proof of the extent of the influence and of its control cannot be arrived at with any degree of accuracy from the evidence, yet sufficient is shown to leave no doubt but that these undue influences were widely felt, and prevented, in the district in contest, a free, fair, and full election.

But if any doubt were left in the minds of your committee of the perfect propriety of declaring the election in the first South Carolina district null and void for the grounds heretofore examined, the doubt is solved because of the wholesale intimidation practiced by armed colored clubs and organizations during the campaign and at the polls on election day. The evidence is clear that throughout the district, and in nearly every precinct of the district, these organizations existed. They were armed with the State arms for the most part, but many had private arms. They went to their political meetings with arms in their hands, and at many of the polling places they appeared on election day in an organized force.

So intolerant were they against individuals of their own race who differed with them politically that they uttered against them the most

terrible threats, and, in some cases, resorted to actual violence. They denied the right of free speech; they tore tickets from the hands of voters and substituted others; they interfered with the domestic peace of colored Democrats by persuading their wives to leave them, and left no device that could intimidate unemployed to coerce men of their own color into voting the Republican ticket. Evidence clear and indisputable is found in the record of this state of facts, and of the widespread influence with this mode of electioneering produced in the minds of the colored voters.

It will not suffice to meet these facts by saying that both sides resorted to this system of tactics. The record does not sustain the charge of intimidation generally against the Democratic party of South Carolina. The proof is clear that they pursued the policy of conciliation for the most part. Especially was this the course that characterized the campaign of contestant.

Governor Hampton testifies, and he is amply corroborated by other witnesses, that contestant pursued "the extreme policy of conciliation."

But grant that it was true. Grant all that is claimed against the "rifle clubs" and other organizations of the white people. Grant that they, too, pursued the lawless policy adopted by the Republicans. It but affords the committee more and stronger grounds for declaring the election null and void. The committee append hereto extracts from the testimony of a few witnesses upon this point.

Elmore Durant, colored (Record, pp. 84-85):

Question. Did you join the Democratic party during the last campaign and vote that ticket?—Answer. I did both.

Q. Was any influence brought to bear on you or anything done either to cause you to vote or not to vote that ticket?—A. I was frequently warned that I would suffer personal injury if I did not quit the Democrats and return to the Republican party. As the election drew near it got hotter, and one morning I found a written paper at my door which warned me that two weeks only were left for me to change in, when, if I did not return to the Republican party, my light would be put out.

Q. What other information can you give?—A. I was working at town; my house was 2½ miles from town. I and my wife had lived in peace until I joined the Democrats; we have parted since for that reason. One morning my wife informed me that two colored men came along on horseback and said that I would not be on that road long, unless I turned from the Democrats, and my wife advised me to return to the Republicans or I would be killed some night. My wife's father (Dick Moore) cursed me and said if I continued to stay with the Democrats I ought to have my throat cut. He influenced my wife to dissatisfy her, and at last I slapped her. That night her father advised her to leave me, calling me a damned Democrat. My wife left me in September or 1st October, and on the ground that I had joined the Democrats.

Isham Robinson (colored) sworn (Record, p. 87):

Question. When did you unite yourself with the Democratic party?—Answer. In March last.

Q. Tell anything that was said to you to make you vote either for or against the Republican party.—A. Just before Hampton made his speech in Sumter they came to his house on a Saturday night and set fire to my cow-pen on both sides. The wind was very high at the time. I ran out and drew the fence down, and, with the help of my family, put the fire out.

Q. Have you heard any threats previous to your cow-pen being set on fire?—A. I did hear, and all that would vote the Democratic ticket would be burned out.

(Objected to as hearsay.)

In consequence of these threats I set up and guarded my premises for two weeks thereafter, and did not vote on the day of election.

Q. Any other threats?—A. I heard it said, "Old Isham Robinson joined the Democrats, and ought to be whipped."

Minus Felder (colored) sworn (Record, p. 88):

Question. When did you unite yourself with the Democratic club of Sumter County?—Answer. During the last summer.

Q. State what influences were brought to bear upon you to cause you to vote for or

against the Democratic party.—A. All they said, when I came to vote, a woman told my wife at the depot that if I voted the Democratic ticket I must not come back to the house; and when I first joined the party some Republicans met me on the street and told me that I was in danger if I voted the Democratic ticket.

(Objected to as hearsay and opinion.)

London Sumpter (colored) sworn (Record, p. 88):

Question. When did you join the Democratic party?—Answer. In March last.

Q. Were any threats or influence brought to bear upon you to cause you to vote for or against the Democratic party? If so, state them.—A. The day before the election I was threatened to get killed if I voted the Democratic ticket; the information was brought to me by others.

(Objected to as hearsay.)

Saw that Isham Robinson's premises had been set on fire; while canvassing the county, James Gaston told me that if I got to Weagefield, where I had an appointment to speak for the Democrats, that there was a party there intending to horsewhip me; that while going to Privateer for the same purpose, I was informed that I would be murdered.

Cross-examination:

Q. Would you have been afraid to testify if colored men had been present?—A. would not.

Horace Bradley (colored) sworn (Record, p. 92):

Question. Did you join the Democratic party?—Answer. I did.

Q. Did you vote the Republican ticket?—A. I did vote the Republican ticket. I scratched Mr. Rainey's name off and inserted Mr. Richardson's instead.

Q. You say you joined the Democratic club; how came it that you voted the Republican ticket?—A. They told me if I voted the Democratic ticket they would throw me out of the brotherhood society and pitch me out of doors head foremost.

Q. What else was told you would be done to you if you voted the Democratic ticket?—A. Governor Chamberlain was to turn out all the convicts in the penitentiary, and all the colored people voted the Democratic ticket were to put in their place; that all the troops would drive us to the polls and make us vote the radical ticket; those that did not vote the radical ticket were to be put on a list and go to the penitentiary.

Q. Where did you hear that talk?—A. Right in our church, at the society meeting.

Q. Was there anything said, and, if so, what, about turning you out of the society?—A. If I voted the Democratic ticket I was to be put out, or if I put an additional Democratic name on the ticket I was to be put out also.

Q. What was it, now, that caused you not to vote the Democratic ticket?—A. The reason stated, and in addition, because they told me that Chamberlain was to erect large stores throughout the country for the benefit of all Republican voters, and that the ones voting the Democratic ticket were to be placed in fields with drivers over them and the children to be put back into slavery; this caused me to take my name off the Democratic club list.

Cross-examination:

Q. Was this brotherhood a political club?—A. It was.

Robert Ross (colored) (Record, p. 93):

Question. Were any threats or undue influences brought to bear on you to keep you from canvassing the county for the Democrats and to keep you from voting the Democratic ticket? If so, state what.—Answer. They were. I was told that if I should go to Privateer to speak I would not return alive, and I better had fast horses to get away, because the coons down there said they don't intend to allow any Democratic niggers to address them in that section.

(Objected to as hearsay.)

I was a member of the Union Brotherhood with Abram Rudian, and we joined the Democratic club; they turned us out; would not hear from us at all, and threatened to turn us out head foremost.

Q. What reason was assigned to you, and who by, for the introduction of the troops?—A. I heard it from the court-house ring and the brotherhood that they were brought here for the protection of the Republican party, and to carry the election for the Republicans. I heard this right at the court-house.

D. E. Keels (Record, p. 96):

Question. Was there any intimidation of colored voters by colored people which

or your knowledge? If so, state.—Answer. A good many told me that if people would join the Democrats they would whip them for so doing. These threats deter colored people from joining the Democrats?—A. Of my ledge, I do not know; but colored people told me they were afraid of their to join the Democratic party, and some said that their wives said they to their husbands; others, that they would be turned out of churches. to so much as is hearsay.)

Broûn sworn (Record, p. 97):

1. Were you a manager at any of the precincts at the late election?—Answer. I but acted as the Democratic supervisor's clerk at Manchester poll, and was ay from 6 o'clock a. m. until the polls were closed that night, and until otes were counted and certificates made out and properly signed. ng the day did anything unusual occur? If so, state what it was.—A. I here claimed by Republicans, and none claimed by Democrats. t kind of arms and what were they you alluded to?—A. Soon after opening s I saw colored people riding up, displaying fire-arms freely: they came up some of these arms were deposited on a wagon without a body on it, but floor, within about fifty yards off and in full view of the polls. riding up to the polls armed, how did these men proceed to vote?—A. Left without the building, crowded in the house, and were sworn in several at and then voted; they were unusual boisterous about the polls and within instances of the house. any persons prevented from coming there to vote or from voting the Dem- ket there that day?—A. Two of my tenants told me they were afraid to and went to Wedgefield to vote. d to.) red manager, Jack Simons, a Republican, and chairman of the managers, several against voting any but the Republican ticket.

Haynemuth (colored) sworn (Record, p. 99):

. How did you propose to vote in the recent election?—Answer. Demo-

h way did you vote?—A. Radical.

f—A. Because I heard that they were burning out so many people, it kept

ou hear of any other thing?—A. Yes; I heard they were whipping.

was it they said they would whip and burn out?—A. The Democrats.

o did you hear these things?—A. Through the whole neighborhood.

on to all hearsay.)

the other colored people on the same place with you going to vote as you

they were going to vote the Democratic ticket, and refrained, from the

rs.

d to as opinion.)

fin (colored) sworn (Record, p. 100):

. Were you a citizen of Sumter County and located at Sumter during the ign?—Answer. I was.

ou canvass the county as a member of the Democratic club?—A. I did.

ou know of any intimidation of colored Democrats?—A. Soon after I joined

atic party—I had been for a long time a member of the Union Brotherhood

d a brotherhood meeting, which was turned into a political meeting after

hood business was over, and the necessity of keeping the brotherhood

r political purposes was shown and discussed. I was pointed out as one of

rd-bearers, yet had gone over to the Democrats, and thus sold my birthright

ldren's freedom. I tried to be heard in my defense, and was stopped by

ut him out," "Kill him," &c. After that time the colored Republicans

ne in the street, and they turned me out of the brotherhood, keeping my

h I had put in.

was the brotherhood formed for?—A. At first for charitable purposes, and

turned into political association.

ou ever imposed upon or maltreated for your Democratic opinions?—A. I

l very roughly at Mayesville, abused and threatened with a whipping. At

as informed by Mr. J. M. Tindall, candidate for sheriff of the county on the

ticket, and at that time the sheriff, that if I went to Privateer I would be

He afterward said that I would be allowed to speak if I agreed that he was

ie, and that I had better have a good horse to get away on. At Wedgefield

I was in was stopped, and I was very seriously threatened. The Rev. W.

was riding with me. He stopped the man who was threatening me and

ray. He was the Republican senator for the county.

Q. Where were the Union Brotherhood organized?—A. At every precinct in the county.

Q. Did they afterwards turn out with political organizations of the Republican party?—A. They were organized a good while before the campaign, but after the campaign opened they turned out with banners, representing each election precinct in the county, and joined the Republican processions.

Q. Were you present at Privateer when the sheriff, J. M. Tindall, made an address to the Union Brotherhood?—A. I was.

Q. What sort of a speech was it?—A. A political speech.

Q. Who else spoke?—A. Senator Maxwell, of Marlborough.

Q. Was there any Union Brotherhood in it?—A. None that I heard.

Q. Do you know of any threats made against colored people for affiliating with Democrats?—A. It was just a general tantalizing and threatening of them. Some preachers never closed a sermon without bringing in the Democratic darkies. It was the common cry that any negro who joined the Democrats ought to be killed.

Cross-examined:

Q. At the brotherhood meetings proper, were politics discussed?—A. No.

Q. Do not the rules forbid?—A. They do.

Q. Were not there political matters discussed after the brotherhood had adjourned?—A. There were.

Q. Does the brotherhood, as such, ever transact business in public?—A. No, sir.

Q. When were you turned out of the brotherhood?—A. I can't tell the day of the month; I think it was in the month of September.

Q. Who ever refused you admission to the brotherhood upon your presenting yourself for that purpose?—A. The doorkeeper at the district meeting; I don't know his name.

Q. Was you ever refused at any other time when you went there and knocked?—A. I never went; the doorkeeper told me that I was not recognized because I was a Democrat.

Q. How was this meeting composed?—A. Of delegates from the different precinct brotherhoods.

Q. Were any persons except delegates entitled to admission?—A. Not that I know of.

Q. Were you a delegate?—A. I was not.

Q. You speak of being threatened with a whipping at Mayesville; is it not a fact that the threats were made by a drunken man who was kept off by other Republicans?—A. No, sir; the threats were not made by him; they were made by those women and the crowd who were around for an hour before he came.

Q. Did the man who was drunk make threats?—A. He pretended to be drunk; he put his hand on my Democratic badge; he said, "You must put it off; we don't allow no Democratic niggers here."

Q. Is not that the same man who was carried off?—A. He was.

Q. Mention the preachers whom you have heard preach against the Democrats?—A. I have heard James White. I only go to one church. He is the only one I heard.

Q. State who said that any colored man who voted the Democratic ticket should be killed?—A. I heard the general rumor that they ought to be killed. Sam MacDuffie is one that I heard say so; also Moses James. Those are all I now can recall to be positive about.

Q. Where did you hear Sam MacDuffie say so?—A. He told me so at the corner of Mr. Cohen's store.

Q. Who was present?—A. I cannot call names. I saw a crowd, but don't remember persons.

Ralph Wilson (colored) sworn (Record, p. 102):

Question. Were you a resident of this county?—Answer. I am.

Q. Were you here during the last campaign and election?—A. I was.

Q. Did you join the Democratic party and vote the Democratic ticket?—A. I did.

Q. Were any threats made against you for joining the Democratic party and for desiring to vote the Democratic ticket? If so, state what threats, and who made by.—A. They threatened to whip me, and threatened also to burn out every Democratic nigger; further stated that the troops came here to make them vote for the Republican party.

Q. Who did you hear these threats from?—A. A great many from the Republicans of Sumter.

Q. Was it or was it not a fact that these reports and threats were generally circulated through the county?—A. They were generally talked about among the colored people.

Q. Do you know whether these threats and talk about the troops prevented colored people from voting the Democratic ticket?—A. I don't know, but the colored people seemed to be very much afraid.

Cross-examination:

Q. Did you believe that the troops were sent here for the purpose of making colored people vote the Republican ticket?—A. I did not.

Redirect:

Q. Did you or did you not try to make the colored people think the troops were not sent here to make the colored people vote the Republican ticket?—A. I did; everywhere I went.

Q. Did you succeed in doing so?—A. I did not; a great many of them believed the other way, and so stated to me.

Edward D. Shiver (colored) sworn (Record, p. 103):

Question. Were you a resident of this county during the late campaign and the day of election?—Answer. I was.

Q. Did you canvass the county and take an active part for the Democrats?—A. I certainly did.

Q. Were any threats made to you, or did any threats come to you for being a Democrat and desiring to vote the Democratic ticket?—A. There was, by a good many; did not pay any particular attention to any one, I being a free man to do as I please about voting; they told me if I voted the Democratic ticket I could not stay here, but should vote the Republican ticket.

Q. What threats were made to you in Columbia?—A. I went from here as a delegate to the convention; I was told that I could not stay there that night; that I would be killed if I did.

(Objected to that as not applying, because Columbia is not in the Congressional district.)

Q. What was it said that the troops were brought here?—A. The troops were brought here for the purpose of keeping the niggers from voting the Democratic ticket; this was generally circulated amongst the colored people.

Cross-examination:

Q. Can you name any one who threatened you, or who said the troops were brought here to make the colored people vote the Republican ticket, or prevent them from voting the Democratic ticket?—A. I cannot name any particular one.

Thomas D. McLeod sworn (Record, p. 104):

Question. Are you a resident of this county?—Answer. I am; of Rafting Creek precinct.

Q. Where were you during the election and for some days previous thereto?—A. I was at Rafting Creek precinct.

Q. If you saw any notices posted in that neighborhood, what were they?—A. About three miles from the polling-place I saw more than one notice posted; this was at Brykin's Depot, in Kershaw County, and adjoining Rafting Creek precinct.

(Objected to as not being in this Congressional district.)

Q. Is that the depot where the people of your section ship and receive their merchandise?—A. Yes, it is.

Q. How frequent is the intercourse?—A. Every day.

Q. Did you see any other notice?—A. I had one in my possession within one mile of our precinct.

Q. What was the character of the notice?—A. It read in this way: "We have formed a band of men to whip, four in hand, every colored man who joins the Democratic party to death, and after whipping, four in hand, to cut their ears off."

Q. Were the Republicans armed?—A. They were, with muskets and shot-guns.

Q. Where?—A. At Rafting Creek.

Q. To whom did you deliver the paper-notice you had in your possession?—A. To Dr. E. J. Rembert.

Cross-examined:

Q. Were all the Republicans armed?—A. I cannot say that they were all armed; the guns were not counted.

Q. How many did you see armed?—A. To the best of my knowledge, without having made any count on the spot, about one hundred and fifty muskets and shot-guns were there.

Q. How many muskets and shot-guns did you see there?—A. I did not count what I saw. I only saw one wagon with muskets and shot-guns. I suppose that wagon contained twenty-five.

Q. How many men did you see having muskets and shot-guns upon their persons?—A. None.



Redirect:

Q. Was there any other company of armed men?—A. I heard so, but did not see them.

D. A. Foxworth sworn (Record, p. 109):

Question. Are you a resident of the county, and were you during the last election?—Answer. I was.

Q. Was there, or was there not, a wide spread intimidation in this county over the colored voters; and, if so, who was the intimidation exerted by?—A. Exerted principally by the radical leaders and the black.

Q. Were, or were not, the colored people actually afraid to vote the Democratic ticket?—A. Some of them were. Some who voted with the Democratic party before were afraid to do so this time, and staid at home.

(Objected to.)

Q. What were they afraid of?—A. Afraid of the threats made by the colored people. Q. What were those threats?—A. Various threats. Threatened to be murdered, mobbed, burned out, and some were badly beaten; wives threatened to quit their husbands if they voted the Democratic ticket; in one instance, a woman who formerly belonged to me, her son desired to join the Democratic party, and she threatened to cut his throat. Six men on my place desired to vote the Democratic ticket, but did not vote at all on account of the threats made.

(Objected to as a matter of opinion.)

Q. Did, or did not, the presence of the United States troops exert an influence adverse to the success of the Democratic ticket?—A. I am satisfied it did.

(Objected to as an opinion.)

Q. If the troops had not been introduced into the State and into this county, what would have been the result of the election in this county?—A. I think this county would have been carried by the Democrats.

(Objected to as opinion.)

Q. Would that result have been achieved quietly and peaceably, and without interfering with the free right of suffrage?—A. In my judgment it would have been carried quietly and peaceably and without interference of the free right of suffrage.

(Objected to as opinion.)

Cross-examination:

Q. Is it not a fact that more colored people voted the Democratic ticket at the last election than ever before?—A. I think they did in the State, and perhaps in the county.

Q. Did you hear these threats you speak of, or do you only testify from rumor?—A. I heard some myself; heard one woman say she would cut her son's throat if he joined the Democratic party, and heard two women say they would not live with their husbands if they voted the Democratic ticket; the rest of the threats is from hearsay.

Redirect:

Q. You stated as your opinion that more colored people voted the Democratic ticket in the State and county than ever before; is it not a fact that there never was a Democratic ticket since reconstruction?—A. The first time the Democratic ticket has ever been before the people since reconstruction.

Q. What did you mean by saying that some who had voted the "Democratic ticket before"?—A. I mean who had voted with the whites.

(Objected to as not being in reply.)

Q. State in what way the threats of burning, murdering, and mobbing those colored men who voted the Democratic ticket came to your knowledge.—A. I heard the colored people converse on the subject, and they even said if such and such persons, naming them, would join the Democrats they would be burned out, murdered, mobbed, &c.

D. A. FOXWORTH.

Sidney W. Dick (colored) sworn (p. 110):

Question. Are you a minister of the gospel?—Answer. I am.

Q. Are you a resident and a voter in this county?—A. I am.

Q. What party did you belong to during the last campaign?—A. The Democratic party.

Q. What churches were you accustomed to preach at?—A. St. John's and Shephard's Shad Methodist Episcopal church.

Q. Was anything done to you by these congregations? If so, state what it was, and why it was done.—A. I went to church Sunday in October, went to the pulpit at 11 o'clock a. m. The leader called out of the pulpit, outdoors, and asked me if I was going to vote with the Democrats. I told him yes, I was going to vote for Hampton and for every man on the ticket. I never voted for Chamberlain in my life. Then

Altery Sanders, a member of the same congregation and a school-teacher, said if I would vote for Hampton that I should not preach for these people, and they should not admit me into the pulpit. Upon this the trustees called a meeting for consultation, and voted upon it in the church that I should not preach at all, and they never have since allowed me to preach.

Q. Were any threats made against you for joining the Democratic party? If so, state them.—**A.** Four women met me on the streets, and told me that the men would whip me. Numbers of persons I met on the highway threatened to whip me, but I did not pay any attention to them, and I went on.

R. M. Harriot (colored), being duly sworn, testified as follows (p. 114):

Resides in Georgetown County, and was residing there at the last election. Was engaged in canvassing the county; was a candidate on the Republican ticket. Early in the morning went to the Santee poll, before it opened, and remained there until about 8 o'clock a. m. Went to this poll to advocate Chamberlain and himself for election—himself for the State house of representatives. Distributed the Jones tickets, but the people would not allow them distributed. Saw a great deal of fuss and noise going on at the poll. The excited crowd would not allow one voter and others to vote for this deponent. These votes were taken away and torn up. He saw that his remaining there would cause a fuss, since the general manner of the crowd was threatening, and so he left the poll, fearing a disturbance. This excited crowd did not allow the voters to vote as they pleased. In a violent manner this crowd would not allow any of the voters to take tickets from this deponent. They would not even allow him to paste a slip containing his own name over any one on the regular Republican tickets; but, in an excited manner, would let him have nothing to do with the tickets.

He did not vote at this poll, because he did not believe he would be allowed to vote as he pleased. These parties were advocating the ticket upon which J. H. Rainey was a candidate. They were determined that no other ticket should be voted at the Santee poll.

Saw Joseph Burt at the poll, who would meet the people as they came to the poll. Burt was the distributor of the tickets at the Santee poll. These tickets were given to him for distribution by the county chairman, who was Joseph H. Rainey. These tickets had some of the printed names scratched out, and J. A. Bowly's name substituted in Bowly's own handwriting.

Deponent gave a large number of tickets to a large number of voters. He saw many of these tickets torn up. Henry Smith told him there was no use to distribute his tickets for they would be torn up. Deponent swears that he attended the poll at the Santee precinct on the 7th November last; that he at that time met voters who were willing to vote for him, and who proposed to allow him to substitute names on tickets. He changed several tickets, but the crowd around would not allow the voters to take back the tickets from him. The manner of this crowd was very boisterous and rough. Did not think it safe for him to remain at this poll; thought it best to go away. After this went away and offered voters whom he met other tickets. These tickets were taken from them by one of the same boisterous party.

Eli Howard (colored) testified as follows, after being duly sworn (p. 116):

That he knows Joseph Bush, who lives on Santee. He was a candidate for county commissioner on the Republican ticket. Saw Joseph Bush several times in Georgetown before election-day. Heard him say just before the election, while speaking to a large crowd, that if any one was damned fool enough to carry Democratic tickets to the Santee poll he would be killed. Previous to this he, Joseph Bush, told this deponent that he could control the Santee poll and make the people do whatever he said; that the people would do whatever he told them. He explained to the deponent that on one occasion he had quieted a riotous crowd on the Santee, and thus he believed he had entire control over the people there.

Cross-examination:

That Joe Bush was speaking to the crowd in front of S. R. Cavis's store, when he made those remarks about carrying Democratic tickets to the Santee poll. He did not stop to identify any person in this crowd. His personal interview with Joe Bush took place some three or four weeks prior. No other person was present. Deponent testifies that he was a Republican at that time and is not so now.

Redirect:

After what he had heard from Jas. Bush, he, the deponent, would not have dared to go to the Santee poll to vote the Democratic ticket.

He heard generally talked about that colored men who voted the Democratic ticket were not fit to live, and that preachers had said they were not fit to be members of the church. If he had voted the Democratic ticket he would have been afraid to let it be

known. Was in town when John S. Richardson attempted to speak to a crowd, and was prevented from speaking by a crowd, of which Harvey Jones appeared to be the leader. Harvey was candidate for county commissioner on the Republican ticket.

This crowd would not allow a Democratic colored man to speak, some of them saying that no colored Democrat should speak to them.

Postmaster E. C. Rainey was also with the crowd led by Harvey Jones.

He, the deponent, wanted with others to hear Richardson speak, but the crowd would not allow of it; and so the speakers were prevented from speaking.

Has never heard one say that he was afraid to join the Democratic club. He is a man that stays in the town and never goes out in the country.

Cross-examination :

This disturbance alluded to, when John S. Richardson was prevented from speaking, was more than a week previous to election-day. Saw no disturbance like this on the day of election. Saw nobody prevented from voting at the election. He heard that the Democrats had said that no one who was true to the Democratic party would vote the Republican ticket.

J. A. Jackson colored (Record, p. 120) :

It was supposed that the disbanding of the rifle-clubs would operate in such a manner as to secure protection from colored Democrats, while the colored Republicans would be afforded every protection by the United States troops.

In the course of the canvass, went to several polls of the county. Was prohibited from going to Santee and Bowbicket, and threatened with his life if he went there. His life was threatened in Waccamaw, so that he was compelled to seek protection and use stratagem to escape. One man told him "he would not allow any d--d Democrat to come in that part of the county; that such a one would have to lose his blood there if he ever attempted it." Was frequently threatened with his life.

He knows there was considerable ostracizing of those who were Democrats; and the threats of violence to him were such that he was prohibited from traveling and making speeches to the people. He thinks that if the troops had been brought into this State for peace and the true protection of the voter, that it was essential to have some of them in Georgetown to enable the Democratic colored voters to vote as they pleased. He knows there was an application made for troops to protect the colored people who wanted to vote the Reform ticket. This effort was unsuccessful.

He remembers when John S. Richardson was canvassing the county; was present when he attempted to address the people at a mass-meeting. He was frequently interrupted by a noisy mob, who acted in such a manner as would demons of hell. He compared the scene to the wilds of Africa. Fiendish howls and abrupt questions to the speaker were beyond description. This behavior compelled Mr. Richardson to give up the effort. J. Harvey Jones appeared to be the leader of this riotous mob. On this same occasion a colored gentleman, named Hutchins, attempted to address the people in behalf of the Democrats, but was not allowed. He was not allowed to speak at all. He was led to believe that this behavior had been the result of a concocted plan on the part of the Republican leaders to interrupt free speech.

At some of the polls he would not have dared to go on election-day. His life was threatened. Does not think that any man would have dared to carry Democratic tickets to these polls. The threats were so great and violent against colored Democrats as to make them fear to act or vote freely.

The deponent says he is now shunned and ostracized by the Republicans because he voted and acted according to the dictates of his own conscience. He believes the noisy disturbance at the meeting at which Mr. Richardson attempted to speak was created by the friends of Joseph H. Rainey. He believes that bodily harm might have resulted to the Democrat speakers on this occasion.

He knows there were threats held out by the church by a preacher against Democratic voters. They were told that the public schools would be closed up; that in other parts of the country wives had split the heads of their husbands open, and they might do it here. Such language from the pulpit had an influence upon the minds of the people greater, after the disbandment of the rifle-clubs and the arriving of United States troops, than before.

He knows, of his own knowledge, of colored men who had told him, "If they voted the Democratic ticket they would not dare to go to their wives," and two men told him that "if they voted it they knew they would never see their homes alive." He knows some eight or ten men who said that they would not join the Democratic clubs, but would vote the Democratic ticket, if they could do so without its being known.

B. H. Williams was candidate on the straight Republican ticket for State senator. He was a presiding elder in the A. M. E. Church, presiding over the district including all of Georgetown, Horry, and part of Williamsburg Counties.

That previous to the election, at several public meetings, he saw the Republicans as a general thing armed with guns. At one meeting, on Pee Dee, saw nearly every Republican present armed.

F. W. McCusker (Record, p. 122):

The next appointment was at the court-house in Georgetown. Saw a colored man attempt to address the people from the court-house portico, but the crowd was so boisterous and riotous that he could not be heard at all. This man's name was Hutchins, a colored Democrat who was speaking in favor of reform. He heard from the crowd calls for Richardson, and the expression, "We don't want to hear from no d—d carpet-bagger." They would not allow Hutchins to speak. Peter Woodbury addressed them, and asked them to keep order, and let Mr. Richardson speak. After order was partially restored Mr. Richardson began to speak; spoke about 15 minutes without interruption, when the noise and confusion began anew. Questions were put to him so fast, and the confusion became so great, that he was prevented from speaking further before he was half through. It seemed to be the set purpose of this party to deny him free speech. There was quite a commotion in this crowd, which finally broke up in a row. Learned afterwards that one man had been stabbed and another knocked down. He thought that at this time the town was threatened with a serious riot, which was prevented only by the forbearance of the whites.

It had been arranged in the programme of the canvass that the Democrats should have one meeting at Santee; but from advice given by some of the citizens residing on Santee (General Manigault and others), did not go there. Thought evil would arise from it. That the people there looked upon the Democrats as their worst enemies, and would not have hesitated to use violence at the instance of their leaders. Was informed that Joseph Bush had a crowd of roughs who were ready to do his bidding, and were eager and ready for a fray.

(Objected to by contestee as hearsay.)

On this account did not have the meeting, as previously arranged,

The next appointment was at Sampit. On the same day the Republicans had a meeting in Georgetown, at the court-house. On the way to Sampit Bridge, met squads of colored men coming to town, nearly all of whom were armed. This had the effect of leading several of his party to apprehend danger on their return, and, fearing an ambush, they were compelled to break up the Sampit meeting and return to town before night. Was not interrupted, however, on the return to town. This feeling of apprehension was particularly felt by the colored Democrats in the party with deponent on that occasion. They feared personal violence to themselves from the armed Republicans who had been seen going to town in the forenoon.

At the Brook Green poll, on election-day, deponent saw an old colored man, who had voted the Democratic ticket, who, after voting, was severely upbraided in harsh terms by some of the Republicans. This language was such as to have the effect of intimidating other colored men who might have desired to vote the Democratic ticket.

Cross-examination:

Could not say that the shooting at the meeting on Waccamaw was at any person or persons. Does not know whether the guns were shot or not.

London Green (colored), being duly sworn, testified (Record, p. 125);

That he lives on North Santee. On the day of election walked down to the Santee poll. Started from home at seven o'clock in the morning. When he got near the poll, met Paul Allston with tickets for distribution. These were the red tickets, Republican. He asked deponent how he was going to vote. He said "The Jones ticket." Paul said, "If you vote Jones's ticket to-day, I will see you between now and dark, because Jones is a Democrat, and no man shall vote Jones's ticket here to-day." He, deponent, told the boys with him to come on, and Paul Allston said, "If you or any man attempt to vote the Jones ticket at this poll to-day I will have you all arrested here to-day." He said he had authority to arrest any man who voted other than the red Republican ticket; that he got his authority from Governor Chamberlain. He then pulled out a paper from his pocket purporting to be his written authority. Deponent then said to the men with him, "Boys, if voting the Jones ticket here to-day will cause a row, and have us all arrested, we must vote the ticket that Paul Allston has, right or wrong."

Deponent says there were about sixty or seventy men who were at first of his own determination, but who afterwards changed their determination on account of the threats made by Paul Allston of arresting any man who voted the Jones ticket. There was a great gang of men with Paul Allston in the road, and they would not allow deponent and his party to pass by.

Saw Joseph Burt at this poll. He appeared to be the chief mover of the crowd that was supporting the red Republican ticket. Saw no guns at the poll that day. Did not remain at the poll more than two hours after voting.

Deponent says that he and his crowd were so much intimidated by the threats of Paul Allston, backed up by his show of authority, that they felt compelled to vote the red Republican ticket, which was not the ticket of his choice.

Deponent testifies that Joseph Burt tried to persuade him not to obey the summons issued by R. L. Fraser, notary public, to attend an examination in the present case of Jno. L. Richardson vs. J. H. Rainey.

Thinks there were some 150 or more persons who were influenced by the threats of Paul Allston to vote against their choice, in the same manner as deponent was. He thinks it would have been difficult for any person to vote any other than the red Republican ticket at that poll on that day.

Henry Smith (colored), being duly sworn, testifies (Record, p. 127):

Resides on Santee. Took an active part in the canvass before the last election in the support of the Reform or Democratic party; knows Joseph Bush and other leaders of the Republican party on Santee. These leaders said that any colored man who became a Democrat would be spotted; that, in other words, they would be intimidated, even to the extent of personal violence. Does not think it was safe for a colored man to go about on Santee and advocate his political opinions. The people seemed fearful to take sides with deponent for fear of their bodies.

On one occasion he was personally attacked, a few days before the election, by about fifteen or eighteen men. As he came on the road these men, in ambush, rose up before him in such a manner that he feared they would attack him. They upbraided him with supporting the Democratic party; they laid hold on his horse, and one struck his horse. Their manner was very violent. They said they wanted satisfaction that day, out of him that day. They said, "We will look after you on election-day, and be careful what you do." They said, "You and others are going to put us back in slavery, and we band together to watch you." After many expostulations the crowd let him depart, but said, "You had better look out. If we meet you on the 7th day of November voting for one of those rebels, take care. You are not to cast any vote or come to the poll on election-day."

Job Mazyck (colored), being duly sworn, testifies that he was a United States marshal at the last election; was the head deputy marshal of his county (Record, p. 132):

Heard some of the people say they would lose their rights if the Democrats were elected. Never heard anything about being turned out of church if they voted for the Democrats. Heard threats against W. H. Jones for affiliating with the Democrats. Heard that at Santee there were five men placed on the road to shoot W. H. Jones because he was thought to be a Democrat. Knows one little fellow who was made drunk for the express purpose of shooting Jones, and who afterward said, "Damned if he wouldn't shoot him if he had come along."

The feeling on Santee was such that it was not safe for a person to go there to advocate the Democratic ticket.

Deponent sent Ned Lawrence down to Santee as a deputy marshal, who reported to him that the people down there would not allow any one to distribute Democratic tickets down there, and that there was a man down there who pretended to be a United States marshal, deputized by Governor Chamberlain, and said if he undertook to distribute Democratic tickets there he would have him in jail before night. (Objected to by contestee as hearsay, as to what was told the deputy marshal.)

This hostility on Santee was manifested against all parties who voted else than the straight Republican ticket. Burt told deponent in town that it would be unsafe to carry any other than the straight Republican ticket down to Santee.

Was in town when Mr. Richardson attempted to address the crowd, and was prevented by a row. Deponent thought the disturbers ought to have been captured and put in jail. Gipson and Harvey Jones were the leaders of this mob. Gipson said, "Let us make a fuss, that they can't speak." The noise was so great that no free speaking could be had or heard. Heard the row, but did not see any person knocked down or cut; was away from the court-house about a square at the time of the greatest fuss. Heard Republican leaders speak in such a way as to terrify the people if they voted against them. Heard Gipson, in a speech, say, "If Ross Johnson would go out of town he would have him whipped, for he was a d—d Democrat, and was trying to get the colored people down in the ditch again." This language was very loud and indecent.

Heard no other threats of violence. Was in town when General Hampton addressed the people. At this time saw Gipson in a crowd of colored men threatening all who became Democrats.

Deponent, on the day of the procession, saw a colored man who wanted to raise a mob and strike a Mr. Britton, and deponent was forced to use his authority as United States marshal to quiet a row.

The colored people who were in the procession were treated with abusive language by crowds of women and boys as they passed by, which continued during the time the procession was moving.

Heard people say that they were going to stop the procession on that day. Deponent and his deputies were kept pretty active on that day in preserving the peace. He had every apprehension of there being a row. There was a dread over the mind of the people generally that the success of the Democratic party would lead to their disfranchisement.

He knows that W. H. Jones was afraid to visit Black River, Upper Waccamaw, and Santee, because the people there had threatened him because he was thought to be a Democrat.

Knows of a great many threats made against W. H. Jones throughout the county. Heard some in town. Saw a man who had a pistol and was dodging around deponent's shop looking for Jones. The behavior of this man led deponent to believe that he was on the lookout for Jones, with the intention of shooting him when he came out of the gate. This same man had previously made threats against Jones. After this, these same political enemies of Jones had made an arrangement or conspiracy to shoot into deponent's house, where Jones was staying, but the conspiracy was disclosed and the attempt was not made.

Deponent knows that if the people had been allowed to vote as they pleased that the Jones ticket and the Democratic ticket would have got a much larger number of votes than they did. Deponent, himself, selected only two of his deputies; the rest of them were selected by the United States marshal in Charleston. These were all Republicans but one. The election in town went off peaceably.

The reason of the hostility against W. H. Jones was the belief that he had changed to a Democrat.

Had heard that a preacher named Murrell had said that the only way to beat Jones politically was to kill him.

(Record, page 134):

S. E. BARNWELL is a resident of Georgetown County. Lives at North Santee. Took an active part in the late canvass. Took pains to get at the situation, or the bottom facts of the political sentiments of the people generally. He ascertained that there was undoubtedly an ostracism practiced by the colored people against those of their color who leaned toward the Democratic party. This spirit was calculated to depress the colored people, and that the effect on the people was intimidation pure and simple; that they were led to fear blows and personal violence if they left the Republican party. The masses of the people on Santee were under the control of a few leaders, who evidently had great influence over them.

In the campaign, an appointment was made by the Democratic speakers for Santee, but was not had because the gentlemen on Santee had an apprehension that it would lead to a violent row, from which their homes and families would be endangered. This apprehension arose from the fact of the hostility of the colored people to the Democratic party; especially against colored men who would go with the Democrats. This hostility was clearly manifest. Deponent himself had to caution colored people who were Democrats against uttering sentiments which could be uttered in a free country, but which if spoken out in that neighborhood would subject them to personal violence. There was then open and avowed intimidation on the part of colored men who desired to go with the Democrats.

This intimidation of the colored people was so evident that the white people of this part of the county feared that it would extend to them in a measure. The impression on the part of the whites was that efforts would be made to repress the free exercise of the elective franchise.

He thinks many white men went to the Santee poll on election day solely from a stern sense of duty; that they apprehended danger at the poll to themselves and apprehended a general row.

Was at the Santee poll between 10 and 11 in the morning on election-day. Deponent stopped a group of boys who were in the act of voting when deponent got to the poll, and challenged them. In consequence of this act there was quite a commotion, a gathering around of the colored people, who told deponent he had no right to stop any voters. Sheriff Lesene stepped forward and explained to the crowd before they would be quieted.

Afterward deponent challenged another group of boys, when a colored man told him he had no right. Deponent replied, when this man was called away.

It was not safe for a black man to advocate the Democratic ticket at that poll. Deponent would have advised a colored friend of his not to run such a risk; that it was too great for the occasion to justify. No colored man did advocate the Democratic ticket at this poll.

The demonstration of violence against the Democratic ticket was so great that the white gentlemen present did not even actually engage in advocating the Democratic cause.

Cross-examination:

By ostracism deponent means revilings—threats generally—as being the mode of

ostracizing; reviling them for being Democrats, and thereby being enemies to their race and color. Knows a man named Henry Smith, who was a conspicuous object by ostracism by his race. Nothing of this kind was used by the opposite party. Rather inducements and encouragements were afforded those who would join the Reform party.

Friday Bossard (colored), being duly sworn, testifies (Record, p. 140):

Resides in Georgetown County. In the last campaign took part with the Reform movement. Means of intimidation were used against all colored persons who wished to join the Reform movement by the Republican parties. Joseph H. Rainey, at the Georgetown poll, was seen by deponent to take away a Democratic ticket from a colored voter, saying his name was not on it, and was only prevented by the active interference of deponent from tearing it up.

The doctrine was taught by the Republican leaders that the Democrats would put the colored people back into slavery.

Does not know of any threats of actual violence.

The colored voters on deponent's plantation were afraid to vote as they pleased, on account of the teachings of the Radical leaders. Thinks a great many of them would have voted the Democratic ticket had they not been afraid to do so. Deponent's brother had to come to the poll by daybreak to vote, for fear he would be found out and injured, on account of having voted the Democratic ticket.

From his observation on his own plantation, deponent thinks this same influence was extended throughout the entire county, and that it prevented many colored men from voting the Democratic ticket.

Deponent feels that he himself has been ostracized by the colored Republicans; that they all turn the cold shoulder to him.

They treat other colored men who voted for the Democrats in the same way, and worse—to such an extent, that in some cases deponent has had to protect some from unkind treatment on the part of the Republicans.

The efforts of the whites to induce the colored people to join them were of the kindest character.

Some of deponent's laborers have left him on account of his being a Democrat, and thus he has been short of employes when needed. These laborers were the women named Dora Toomer, Hester Brown, Lucretia Mahew, Annie Brown, Jane Gaillard, Susannah White, Betty Smith, Annie Bookie, Catharine Bookie, Rose McGuine, and one man named Frank Bookie, and another man, Isaac Lewis. They left in January last when their contract expired. These women are all married, and their husbands are all working with deponent. These women made their husbands vote the Republican ticket. They said if their husbands voted the Democratic ticket they would see what they, the women, would do; and by that all the husbands voted the Republican ticket. Thinks he does not know that the men voted in consequence of what the wives told them. This is what led deponent to believe that the men were afraid to vote the Democratic ticket.

Tom McGuine was the name of the colored man whom J. H. Rainey attempted to prevent from voting the Democratic ticket.

Joseph H. Rainey was one of the leaders who said that those who voted the Democratic ticket should be treated as enemies. Rainey was the only one of the leaders whom deponent heard say this; and also Gibson. He remembers no other. He heard Rainey say so on election-day, at the court-house, and at no other time. At the same time he heard Gibson say the same thing, and "preach a sermon off of it." The other time he heard Gibson say so was the day when Hampton was in Georgetown, when he said so in Georgetown.

Peter Woodbury (colored), being duly sworn, testified (Record, p. 143):

Lived in Georgetown County before and at the last election. Went around the county canvassing. Advocated the Democratic ticket.

There was more intimidation in this last election than deponent had ever seen or heard of before. All of the leaders of the Republican party that could utter a word to the people told them not to vote the Democratic ticket; if they did they would certainly go back into slavery. Deponent believes there were a great many men who would have voted the Democratic ticket if that had not been so advised by their leaders. Even in joint discussions the Republicans would try to inflame the people. Gibson would endeavor to inflame the people on every occasion. On the day when Hampton was in town Gibson frequently endeavored to create a row.

The effect of the teaching of the Republican leaders, by which the people were intimidated, was to prevent the colored people from voting the Democratic ticket.

It was the general impression throughout the entire country that the colored people who supported the Democratic party would be turned out of the church. The preachers spoke this from the pulpit.

Deponent was among the people a great deal, and was capable of ascertaining their sentiments.

The impression among the people was (when the rifle-clubs were disbanded) that the colored man who voted the Democratic ticket would not be protected, while those who voted the Republican ticket would have every protection; that the Republicans freed them, and that they must do what the Republicans told them to do, and that the leaders were sent here to see that they voted the Republican ticket. Has heard the people say that if they failed to vote as the leaders said they would lose the protection of the Republican party.

On the night that Mr. Richardson spoke and was prevented by the people, led on by Harvey Jones, Gibson, and others, deponent endeavored to quell the riot, but in vain.

Heard that Gibson had told the people that the Democrats had tried to drown him when they had brought him over from Waccamaw in a boat. Deponent knows to the contrary, because he was in the boat himself. Gibson spread this report about among the excited crowd that night. There was a considerable row that night, brought on by the Radical leaders. Deponent thinks this riot had a considerable effect in intimidating the voters who might have desired to join the Democrats.

Remembers when going to a meeting on Sawpit, he saw a considerable number of colored men coming to town armed. There was a general apprehension in the minds of the colored people who were with deponent that a row was imminent. In consequence of this the meeting on Sawpit was broken up prematurely.

Henry Perry, having been called as a witness for the contestant, after being duly sworn, testified as follows, to wit (Record, p. 165):

Question. Are you a resident of Darlington County, and were you present at the last general election, 7th of November, 1877?—Answer. I am, and was.

Q. Were you a member of the Democratic club at this place?—A. I was.

Q. State what occurred to you on the day of the election.—A. After I had voted on the day of the election I staid away from home for several days.

Q. Why was that?—A. I did not want to have any fuss with my wife in consequence of voting the Democratic ticket. After the speaking of Whittemore and others she got after me about being a Democrat.

Q. Were the colored Democrats threatened, abused, or interfered with by the Republicans?—A. I was not, but have heard others abused. Abraham Brown is the only one I know of; colored Republicans threatened to beat him; Joe Slaughter was abused by same parties.

Cross-examined:

Q. Who abused Joe Slaughter?—A. Joshua Daniels and B. O. Holloway.

Q. What did they do to him?—A. They threw him out of the public-school house.

Q. Was it at a political meeting of the Republicans? If so, what did he do?—A. It was. He did not speak or offer to speak. They told him to go out, when he refused; they then put him out.

Q. Did you see or hear any one abuse Abraham Brown?—A. I only heard of it from others. He told me of it before the election himself.

Q. Who do you work for?—A. For Calvin Strother, a colored Democrat.

Q. What do you do?—A. I am a blacksmith.

Q. How many days did you stay from home?—A. Was away from home three days after the election.

Q. Where did you stay after the meeting spoken of?—A. From the meeting spoken of up to the election I staid at home.

Q. Did your wife ever beat you?—A. No, sir.

Q. Did any one ever beat you?—A. No, sir.

Q. Has any one beat you or interfered with you on account of your vote?—A. No, sir.

Redirect examination:

Q. Could a timid colored man have voted at this precinct at the last election?—A. He could not without difficulty, in my opinion. I am not afraid of anybody.

Yanty Byrd, having been called as a witness for the contestant, after being duly sworn, testified as follows (Record, p. 166):

Question. Are you a resident of Darlington County, and were you present at the general election of November 7, 1876?—Answer. I am, and was.

Q. Were you a member of the Democratic party?—A. I am, and have been since the war, and expect to remain so.

Q. Have you ever been threatened, abused, or disturbed on account of being a Democrat?—A. I have been cursed, abused, and threatened to be whipped for being a Democrat; they double-teamed me once, and have attempted to whip me several times.

Q. Was violence used or threatened against other Democrats, colored?—A. Oh, yes. I heard Abraham Brown's son threaten to whip him coming from the Hampton meeting at Darlington Court-House, the Saturday before the election.

Q. Were colored men prevented from voting the Democratic ticket by others of their own color?—A. Many colored men were prevented from voting the Democratic ticket by their own color; many have told me so since the election.

Q. Could any but a bold man of your color vote the Democratic ticket?—A. No, sir.

Q. Were not the colored people told by B. F. Whittemore and others to fire the woods on the day of election, to keep the Democrats at home to fight fire?—A. He told them if the women could not control their husbands they must set fire to the woods to keep Democrats at home.

Q. What sort of a day was the 7th of November?—A. It was rainy in the morning, and the night previous.

Cross-examination:

Q. Did you hear Whittemore, or anybody else, make the statement above related?—A. I did not. My wife told me she heard him say so. I did not go to any of their meetings.

Calvin Strother, having been called as a witness for the contestant, after being sworn testified as follows (Record, p. 116):

Question. Are you a resident of Darlington County, and were you present at the general election of 7th November, 1876?—Answer. I am, and was.

Q. Were you a member of the Democratic club?—A. I was.

Q. Were colored Democrats abused, threatened, and disturbed by their own color, on account of their politics?—A. They were as a general thing. A great many colored men have said to me that they did not blame white men for being Democrats, but as to black men they could not well understand it.

Q. Was not a great pressure brought to bear upon colored voters by men of their own color?—A. Yes; I believe if it had not been for this pressure brought to bear by colored voters upon their own color, many of them would have voted the Democratic ticket. I don't know, but I think there was also pressure on the part of Democrats against Republicans. But for the influences spoken of, I think there would have been more Democratic than Republican votes.

Cross-examination:

Q. Did you hear threats made by Whittemore and others to burn the woods to keep Democratic land-owners at home?—A. I had heard of firing the woods. My son, a small boy, was at the meeting and told me that Mr. Whittemore did not say that they must fire the woods, but that he (Whittemore) had heard say that on election-day, when they went off to vote, woods were set on fire, and employers would have to stay at home and fight fire.

But your committee could not cumber this report with further extracts from the testimony. The evidence of the witnesses, extracts from whose testimony is given above, is corroborated by Ben Allison, p. 147; W. B. Beamer, p. 151; J. Y. Culpepper, p. 157; Beck, p. 160; Rollins, p. 162; Hunter, p. 163; Moore, p. 164; Perry, p. 165; Byrd, p. 166; Keith, p. 166; Strother, p. 167; Brown, p. 169; Early, p. 175; Edwards, p. 181, and very many others. Among them are Republicans, Democrats, white and colored. Their evidence leaves no doubt in the minds of the committee that the colored Republicans of the first South Carolina district by armed demonstrations, through their religious and social organizations, by threats and actual abuse intimidated hundreds of their own race, forced them to vote against their will, and exercised such undue and illegal influence as to deprive the election in that Congressional district in November, 1876, of all character as a full, free, and fair election. But the saddest page of the history of the election in South Carolina remains to be written. It is that which chronicles the deliberate, willful, illegal, and unconstitutional effort to control the election in that State by the use of the military forces of the United States.

The history of reconstruction in the South shows that the rotten-borough governments which were born of military power have fallen in pieces so soon as the military power was removed. They had no strength of themselves; they could not exist alone. So it has been, that when-

an election was to be held in those States, the bayonet was resorted to as the most convincing argument with the people. From most of the Southern States from 1868 to 1872, and in others of them even as late as 1876, and even now in one of them, representatives, not of the people, but of the bayonet, have sat in the Congress of the United States.

Let us cherish the hope that this humiliating spectacle will be seen no more. Let us believe that it was the natural result of a great war in which the Government must needs trust all to the military arm, and which took on a fierce military spirit, which clung to it for the time of a civil administration. Let us hope that it was never intended to be in reality it was, a deliberate violation of the Constitution, and a gross war upon American institutions.

In the middle of October, 1876, the fortunes of the Republican leaders in South Carolina had grown desperate. The colored voters were deserting them by thousands. They were flocking to Democratic meetings; they were riding in Democratic processions; they were joining Democratic clubs. On this point there can be no doubt.

The conciliatory policy of Governor Hampton and his co-workers in the cause of reform and good government, the dreadful condition of both brought about by eight years of misrule and plunder, the disgust of many of the most respectable colored men at the broken promises and corruption of the Republican leaders, the troubles and bad feeling which caused a feeling of general distrust and insecurity—these and other similar causes were revolutionizing the minds of vast numbers of colored race, and they were joining with their white fellow-citizens to overthrow the rule of the public plunderer, and to save what little was left of the State's imperiled interests.

And at this time, too, perfect peace and quiet existed in the State. There were no riots, no tumults, no bloodshed. There was, indeed, the least excitement incident to a hotly-contested political campaign, but all peaceful.

It appears by the record that nearly every judge and sheriff in the State testify to this fact—both Republicans and Democrats. Look at the evidence (Record, p. 36):

Honor Judge A. J. SHAW sworn.

Question. Where do you reside?—Answer. In the town of Sumter, S. C.

Do you hold any official position in the State, and, if so, what?—A. I am judge of the third judicial circuit, composed of the counties of Sumter, Clarendon, Willoughby, and Georgetown.

How long have you been the judge of this circuit?—A. Since February, 1875.

Where were you during the political canvass of last fall, and at the time of the election on the 7th of November?—A. During the month of September I was at the . . . I returned to Sumter the first week in October, and have been within the limits of my circuit ever since. On the day of the election I was in the town of Sumter.

When did the fall and winter terms of your courts begin, and when did they close?—A. They commenced at Sumter the second week in October, and ended at Georgetown about the second week in November. The business of the courts, however, did not occupy all of this time. The litigated cases in the common pleas were tried, and there were fewer cases in the general sessions than ever before on the part within my knowledge. In Sumter, especially, where the dockets were always full, there were only five or six cases.

Was there during this period any insurrection, domestic violence, or lawlessness in your circuit, which obstructed or hindered the execution of the laws?—A. None I ever knew or heard of. There was no lawlessness or violence of any kind which would have prevented the ordinary process of the courts could not remedy, and, notwithstanding the very great political excitement which prevailed, the laws were maintained and administered without difficulty.

THE STATE OF SOUTH CAROLINA: (Record, p. 199.)

Personally appeared before me C. P. Townsend, who, after being duly sworn, says that he is judge of the fourth judicial circuit of the State of South Carolina, and has been since August, 1872; that during the last political campaign in South Carolina, extending from July to November 7, 1876, there was no obstruction to the execution of the process of the courts throughout his circuit, so far as his knowledge extended, and the law was administered and enforced by the ordinary method provided by the general assembly in accordance with the State constitution; and that there was no lawlessness or violence at any time during the campaign which could not have been checked and remedied by the process of the courts.

C. P. TOWNSEND.

It will be remembered that Governor Chamberlain's proclamation was issued October 7, charging violence, lawlessness, and insurrection. On that day the following correspondence took place (Record, pp. 556-560):

SUMTER, October 7, 1876.

DEAR SIR: In view of the grave charges made by Governor Chamberlain against the Democratic party and their mode of conducting the present canvass in this State to Colonel Haskell, charges declaring that the State is an armed camp, and that our meetings are attended by organized armed bodies, may I ask you as a Republican and as the chief justice of the State to say if, in your observation, these charges are borne out by the facts in the case? You saw to-day one of the largest meetings we have held, and you can therefore speak from experience and personal observation. I have been through seventeen of the counties of the State, and I have addressed, I am sure, at least one hundred thousand people, and I can say with perfect truth that I have not seen one single armed body of men nor has one disturbance occurred at any of these vast meetings. My solicitude for the good name of our State will, I trust, be a sufficient excuse for my calling your attention to this matter.

Requesting an early answer, I am, very respectfully, your obedient servant.

WADE HAMPTON.

To his Honor F. J. MOSES,
Chief Justice.

THE REPLY.

SUMTER, S. C., October 7, 1876.

MY DEAR SIR: I am just in receipt of your note, and at once reply to the same. For the last three or four months I have not been in any of the counties but those of Sumter and Richland. Within that period I have been present at only two political meetings, one held by the Republican party and the other, to-day at this place, by the Democrats. Although I was at the latter but a short time, I was for the greater part of the day in the streets, with every opportunity of observing the behavior and demeanor of the large concourse which the occasion had brought together. The collection consisted of citizens on foot and horseback; I saw in no instance any exhibition of arms or any behavior inconsistent with the strictest propriety. At the Republican meeting to which I have above referred there was no attempt at interruption. I shall require very strong evidence to satisfy me that South Carolina is an armed camp. I know of nothing which would lead me so to conclude. For myself I do not know of anything which would make me doubtful in any part of the State of enjoying the same security which I feel attaches to me under my own roof. I trust the day is far distant when violations of the peace in our own borders will require the interference of any arm more potent than that of the law.

Very respectfully, yours,

F. J. MOSES.

To General WADE HAMPTON.

2d. The replies of judges A. J. Willard, T. J. Mackey, Thompson H. Cooke, A. J. Shaw, L. C. Northrop, and R. B. Carpenter;

VIEWS OF JUSTICE WILLARD.

In reply to letters from Col. A. C. Haskell, chairman of the Democratic executive committee, Associate Justice Willard (Republican), of the supreme court, writes:

COLUMBIA, S. C., October 7, 1876.

To Col. A. C. HASKELL:

DEAR SIR: Your note of this date is before me, asking an expression of my views

as to the existence of rancor and manifestations of violence in the character of the Democratic canvass of this State. I am unable to throw much light on this subject for two reasons. In the first place, I have been absent from the State for the last three months, and only a week has passed since my return to this city. In the second place, my ideas of the character and responsibilities of the judicial office have led me at all times to abstain from participating in political action, and accordingly I have little information except that derived from public rumor and the newspapers of what has transpired at political gatherings. I can only say that I have witnessed nothing beyond the circumstances generally characteristic of an excited political canvass. I have seen no violence; on the contrary, as far as I have had intercourse with gentlemen of your party, I have observed less disposition to excited statement and personal bitterness than during any of the previous political campaigns in this State. I sincerely hope that the fears of many that the lawless portion of the community will be permitted to disturb the peace and injure the good name of the State are groundless. I am satisfied that it is the intention of the leading members of your party to prevent such a state of things, and I believe they have the ability to do so.

Very respectfully, your obedient servant.

A. J. WILLARD.

JUDGE MACKEY'S PROTEST.

Circuit Judge T. J. Mackey (Republican) telegraphs as follows:

CHESTER, S. C.; October 7.

To A. C. HASKELL,

Chairman State Democratic Committee, Columbia, S. C.:

In reply to your inquiry of this date, I would state that peace and order prevail throughout the limits of the sixth judicial circuit, embracing the four counties of York, Chester, Fairfield, and Lancaster. In this circuit no armed organizations obstruct judicial proceedings, and no resistance has been offered to the due execution of legal process. In charging the grand jury of York, on last Monday, I stated that if any citizen, whatever might be his race, color, or party, had been threatened with loss of employment, or put in terror because of his political opinions, he should make complaint before the grand jury or in open court, and the laws should be put in motion to sustain him in the free and untrammelled exercise of all his rights of citizenship. The grand jury, consisting of nine white and six colored citizens, reported unanimously on last Wednesday night that no organizations, either armed or otherwise, having for their object the exhibition of force to control the free exercise of the elective franchise, existed in that county, and no complaint charging the existence of such organization had been made to them. The same is true of each and every county in this circuit. The only case of political intimidation that has transpired in this circuit was tried at York on last Thursday, the defendant being one Edward McDonald, colored, charged with threatening the life of one Henry Lowry, also colored, because he had joined a Democratic club, and had declared his purpose to vote the Democratic ticket. The jury consisted of six Republican colored citizens and six white men, one of whom is also an avowed Republican. The prisoner was ably defended by W. B. Williams, esq., himself a candidate on the Democratic ticket. The jury were charged by me that they were the sole judge of the evidence, and that the guilt of the prisoner must be established beyond a reasonable doubt to warrant a conviction. They rendered a verdict of guilty, and I sentenced the prisoner to three months in jail; the lowest penalty prescribed by law for the offense. I have traversed many counties in the State canvassing for Hayes and Wheeler and in favor of Chamberlain for governor during the past sixty days, and I have nowhere seen an attempt on the part of any portion of the population to suppress the right of free speech by armed violence.

I solemnly protest against the proclamation of Governor Chamberlain as absolutely false, in so far as it imputes to the inhabitants within the limits of this circuit any purpose to obstruct the ordinary course of judicial proceedings or to resist in any manner the due execution of the laws for the protection of life, property, or the rights of citizenship; and I have good and sufficient reason to believe, and do believe, that the said proclamation is equally false in imputing such insurrectionary purpose to the white population in the other circuits of this State. I regard the proclamation as symbolizing fitly a formidable conspiracy against the rights of the people, having for its object the carrying of this State for D. H. Chamberlain and his candidates, which conspiracy is further typified by a board of State canvassers or election returning-board the majority of whose members are candidates on Chamberlain's ticket, and by ninety-six commissioners of election in the several counties, seventy of whom are Chamberlain's declared partisans, and of which last number some forty are county treasurers and auditors or trial-justices, holding lucrative offices by his appointment and removable from office at his pleasure, or are known to him as declared candidates for office, endorsing his ticket, who unseat themselves if they make a declaration of the election which seats the candidates opposed to Chamberlain and ticket.

The rifle-clubs that he has ordered disbanded are in the main organizations chartered under the act of the Republican legislature in 1874, and all of them are acting but in the assertion of the right of the people to keep and bear arms, guaranteed against infringement in the second article of the amendments to the Constitution of the United States, and all assert their loyalty to the Union and obedience to its laws and respect and uphold its flag.

T. J. MACKEY, *Judge*.

THE OPINION OF JUDGE COOKE.

Judge T. H. Cooke (Republican) writes:

COLUMBIA, October 7.

To Col. A. C. HASKELL,

Chairman of the Executive Committee of the Democratic Party:

DEAR SIR: I have just read the proclamation of Governor Chamberlain as to reign of terror in this State, and his inability to enforce the laws through the ordinary channel, and I must say that the causes alleged for issuing the same do not apply the eighth circuit, over which I preside, nor do I believe they have any existence as any other portion of the State,

I am, very respectfully,

THOMPSON H. COOKE,
Judge of the Eighth Circuit, State of South Carolina

THE LAW SUPREME IN JUDGE SHAW'S CIRCUIT.

In response to an inquiry of Colonel Haskell, Judge Shaw, of the third circuit, telegraphs as follows:

SUMTER, October 9, 1876.

To Col. A. C. HASKELL:

I know of no lawlessness or violence which the law cannot remedy in this circuit. The law is maintained and administered without difficulty.

A. J. SHAW,
Judge Third Circuit

NO RESISTANCE TO LAW IN THE SEVENTH DISTRICT.

The following telegram was received this afternoon in response to one from chairman of the Democratic executive committee:

NEWBERRY, October 9, 1876.

In reply to your inquiry, I have to say that I am in nowise prepared to express any just opinion upon the peace of the State, except so far as concerns the circuit over which I have the honor to preside. Since my appointment to the bench I have been engrossed by my judicial duties, which have been and are onerous. They have left me without time or inclination to become advise of particular matters outside of my circuit. I am not aware of any resistance to the process of the court in this county, where I have been holding court for a week. Unusual quiet prevails. There seems to be a public apprehension that the times are out of joint, and general anxiety that public order should be preserved. Speaking for this circuit, I can only say that while the public mind is of course inflamed by the ardor of the campaign, I have yet been confronted by any organized or individual resistance to the authority of the courts. The good sense of the people will continue to preserve the public peace.

L. C. NORTHROP,
Judge Seventh Circuit

Col. A. C. HASKELL,

Chairman State Democratic Executive Committee:

DEAR SIR: I have the honor to acknowledge the receipt of your letter of this date propounding certain questions in reference to the condition of the judicial circuit of the State and certain military organizations. After a month's absence from home returned about a week ago, and since that time I have been exclusively occupied with official affairs, holding the regular term of the circuit courts for this county. As to the alleged lawlessness and violence in other portions of the State, I know nothing. I have seen statements in the newspapers giving different and entirely contradictory accounts of the transactions referred to in the proclamation of Governor Chamberlain but have not examined the testimony or been in either of the localities. Since my return home I have been treated by my acquaintances of both political parties with unusual kindness and respect, and I have seen no exhibition of violence and lawlessness. No resistance to judicial process or authority has been attempted in this circuit, to my

knowledge, since I have had the honor to be its presiding judge. I am not acquainted with any other than the Richland rifle and the Richland volunteer rifle-clubs. I do not know of my own knowledge, nor has any complaint been made to me, of any acts of violence, open or secret, having been committed by these companies. My acquaintance with the members of those organizations is quite general, and, from my knowledge of the personal character of the gentlemen composing them, I should think no danger to the peace and good order of society could be rationally apprehended from that source. Withdrawn from partisan politics, as a citizen I feel a deep interest in the welfare of the State, and I hope those of both parties having charge of the canvass will exercise such prudence, justice, and fairness as will insure a free, fair, and full expression of the popular will.

I have the honor to be, respectfully, your obedient servant,

R. B. CARPENTER.

See also testimony of Governor Hampton, report, p. 249, Tindall, p. 458, and numerous others. Here, then, is the solemn and deliberate testimony of the supreme and circuit judges of the State, of sheriffs, and of many other citizens, both white and colored, showing conclusively that Governor Chamberlain's proclamation, upon which the action of the Federal authorities in sending troops into the State was based, was willfully, deliberately, and wickedly false—a libel and a slander upon the people whose interests he was sworn to guard.

Notwithstanding this profound peace, it was determined by the Republican leaders to overawe the State with the presence of troops. They could be used to discourage the Democrats, to encourage the Republicans, and to deter colored men from voting with the Democrats. With the colored race of the South no argument is so powerful as the argument presented in the uniform and bayonets of Federal troops. They believe that to the Union troops they owe their freedom. They have been carefully tutored that they cannot oppose the will of the Government. They are not versed in the law and Constitution sufficiently to know that in popular elections the Government has no right, no will, and no voice. Ignorant and credulous, they were ready to believe that the coming of the troops was for the purpose of compelling them to vote the Republican ticket, and to arrest and punish them if they failed to do so.

All this their cunning and unscrupulous leaders well knew. Hence they determined, as the last resort, to cause troops to be sent into the State. On the 7th day of October, Governor Chamberlain, himself a candidate for re-election, issued the following proclamation. (Report, p. 11):

PROCLAMATION.

STATE OF SOUTH CAROLINA,
Executive Chamber.

Whereas it has been made known to me, by written and sworn evidence, that there exist such unlawful obstructions, combinations, and assemblages of persons in the counties of Aiken and Barnwell, that it has become impracticable, in my judgment, as governor of the State, to enforce by the ordinary course of judicial proceeding the laws of the State within said counties; by reason whereof it has become necessary, in my judgment, as governor, to call forth and employ the military force of the State to enforce the faithful execution of the laws;

And whereas it has been made known to me as governor that certain organizations and combinations of men exist in all the counties of the State, commonly known as "rifle-clubs";

And whereas such organizations and combinations of men are illegal and strictly forbidden by the laws of this State;

And whereas such organizations and combinations of men are engaged in promoting illegal objects, and in committing open acts of lawlessness and violence:

Now, therefore, I, Daniel H. Chamberlain, governor of said State, do issue this my proclamation as required by the thirteenth section of chapter 132 of the general statutes of the State, commanding the said unlawful combinations and assemblages of persons in the counties of Aiken and Barnwell to disperse and retire peaceably to their homes within three days from the date of this proclamation, and henceforth to abstain

from all unlawful interference with the rights of citizens, and from all violations of the public peace.

And I do further, by this proclamation, forbid the existence of all said organization or combinations of men commonly known as "rifle-clubs," and all other organization or combinations of men or formations not forming a part of the organized militia of the State, which are armed with fire-arms or other weapons of war, or which engage or are formed for the purpose of engaging in drilling, exercising the manual of arm or military maneuvers, or which appear or are formed for the purpose of appearing under arms or under the command of officers bearing the titles or assuming the functions of ordinary military officers, or in any other manner acting or proposing to act as organized and armed bodies of men; and I do command all such organizations, combinations, formations, or bodies of men forthwith to disband and cease to exist in any place or under any circumstances in the State.

And I do further declare and make known by this proclamation to all the people of the State that, in case this proclamation shall be disregarded for the space of three days from the date thereof, I shall proceed to put into active use all the powers which as governor I am invested by the constitution and laws of the State for the enforcement of the laws and the protection of the rights of the citizens, and particularly the powers conferred on me by chapter cxxxii of the general statutes of the State, as well as by the Constitution of the United States.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be affixed, at Columbia, this 7th day of October, A. D. 1876, and in the 191st year of American Independence.

[L. s.]

By the governor.

H. E. HAYNE,

Secretary of State.

D. H. CHAMBERLAIN.

The utter falsehood of this proclamation has already been shown. I was indeed but the reckless assertion of a reckless leader of desperate men, who was determined to try that "elixir of life" to the carpet-bag government—the presence of United States troops—as the last remedy to perpetuate its wretched existence in that unfortunate State.

It was, to the people of South Carolina, the formal announcement that their State was again to be carried and their officers and legislators elected and Presidential electors chosen by means of military interference and intimidation.

The call was most promptly responded to. Your committee would vain hope that in issuing the proclamation given below, the President of the United States was but honestly acting as he thought best for the public weal. But the date of the proclamation, the hasty and over-zealous action of the then Secretary of War, the hurried movement of the troops, the anticipation that the proclamation would be unheeded, the presumption against all legal teaching, that a crime would be committed, leave no doubt in the mind of your committee that the authorities of the Federal administration lent themselves and all the appliances and agencies of the Government to the conspiracy to carry the election in South Carolina by the bayonet.

On the 16th day of October, 1876, General Ruger, commanding at Charleston, telegraphed President Grant that all was quiet in the State and added, "If I need more troops I will send you a dispatch telling you I need them." Yet, on the very next day, President Grant issued the following proclamation:

Whereas it has been satisfactorily shown to me that insurrection and domestic violence exist in several counties of the State of South Carolina, and that certain combinations of men against law exist in many counties of said State, known as rifle-clubs who ride up and down by day and night, in arms, murdering some peaceable citizens and intimidating others; which combination, though forbidden by the laws of the State, cannot be controlled or suppressed by the ordinary course of justice; and whereas it is provided in the Constitution of the United States that the United States shall protect every State in this Union, on the application of the legislature, or of the executive when the legislature cannot be convened, against domestic violence; and whereas, by laws in pursuance of the above, it is provided in the laws of the United

States that in all cases of insurrection in any State or obstruction to the laws thereof, it shall be lawful for the President of the United States, on application of the legislature of such State, or of the executive when the legislature cannot be convened, to call for the militia of any other State or States, or to employ such part of the land or naval forces as shall be judged necessary for the purpose of suppressing such insurrection or causing the laws to be duly executed; and whereas the legislature of said State is not now in session, and cannot be convened in time to meet the present emergency, and the executive of said State, under section 4 of article 4 of the Constitution, and of the laws passed in pursuance thereof, has therefore made an application to me in the premises for such part of the military forces of the United States as may be necessary and adequate to protect said State and the citizens thereof against domestic violence, and to enforce the due execution of the laws; and whereas it is required that whenever it may be necessary, in the judgment of the President, to use the military force for the purpose aforesaid, he shall forthwith by proclamation command such insurgents to disperse and retire peaceably to their respective homes within a limited time:

Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby make proclamation, and command all persons engaged in such unlawful and insurrectionary proceedings to disperse and retire peaceably to their respective abodes within three days from this date, and hereafter abandon said combinations and submit themselves to the laws and constituted authorities of said State; and I invoke the aid and cooperation of all good citizens thereof to uphold the laws and preserve the public peace. In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 17th day of October, 1876, and of the Independence of the United States one hundred and one years.

U. S. GRANT.

By the President.

JOHN L. CADWALADER,
Acting Secretary of State.

The following order was issued this evening, in pursuance of the action taken at the Cabinet meeting to-day, for the protection of the public peace in South Carolina:

WAR DEPARTMENT,
Washington City, October 17, 1876.

General W. T. SHERMAN,
Commanding United States Army:

SIR: In view of the existing condition of affairs in South Carolina, there is a possibility that the proclamation of the President of this date may be disregarded. To provide against such a contingency, you will immediately order all the available force in the Military Division of the Atlantic to report to General Ruger, commanding at Columbia, S. C., and instruct that officer to station his troops in such localities that they may be most speedily and effectually used in case of any resistance to the authority of the United States. It is hoped that a collision may thus be avoided, but you will instruct General Ruger to let it be known that it is the fixed purpose of the government to carry out the spirit of the proclamation, and to sustain it by the military force of the General Government, supplemented, if necessary, by the militia of the various States.

Very respectfully, your obedient servant,

J. D. CAMERON,
Secretary of War.

Your committee have thought proper to insert in this report the order of Mr. Secretary of War Cameron, as that official in his zeal to carry out the programme of electioneering by the bayonet, wrote his celebrated order in such a style as makes manifest the real designs of the Federal administration.

His order bears the date 17th of October, issued simultaneously with that of the President. He thinks it possible the President's proclamation may be disregarded. He presumes "disobedience," lawlessness, resistance. Such are not the doctrine of the law. He hurries forward all "available troops." Yes, there was need of haste, for only twenty days remained until the election was to be held. The bayonet elixir of life to the "carpet-bag" government in South Carolina must be speedily

administered or it would be too late to save it. Therefore waiting to see the effect of the President's proclamation, at expense and trouble, and in the face of General Ruger's dispatch only the day before, that he needed no more troops, all the military district are hurried to South Carolina. The Secretary ordered General Ruger to station these troops at the most available places in case of resistance and collision. This order is carried out in that style by scattering the troops in insignificant squads all over the State, destroying their strength and rendering them in case of resistance an easy prey to an enemy inferior in strength, who could deal with them in detail. This force too was, if need be, to be supplemented by militia." What militia? In South Carolina the militia was of but one race. The colored voters constituted "the militia" alone were organized and armed with the State arms. The white militia were unarmed. There was in this threat, to supplement the white militia, a most diabolical threat of setting one race in arms against the other race, and that, too, in time of great political excitement. In the first Congressional district of South Carolina the troops were stationed at eleven places, and all of these happened to be polling places.

Your committee undertakes to say that a more causeless violation of the rights of the people of a State, a more flagrant disregard of constitutional obligation, more thorough contempt for every principle of government was never manifested in American history, than the bringing of troops into South Carolina in October, 1876, by the Federal authorities. It was without shadow or pretense of justification or necessity.

It is, too, a most singular fact, in view of the pretense that the troops were sent, that so soon as the election was over they were withdrawn from the interior and concentrated at Columbia, the capital of the State, to guard the count and the officers making it. They remained in the state-house until the administration expelled them, passed away, and a wise constitutional policy withdrew them from the State.

The effect of the coming of the troops into the State was enormous and marked. True, the soldiers themselves did not in their very presence was enough. The colored voters were there to coerce them to vote the Republican ticket and cause them to be punished if they did not do so. It is set forth so clearly in the evidence that the committee deems it unnecessary to say more on this point than to call attention to the extracts from the testimony.

Wade Hampton, governor of South Carolina, being called upon, swears and deposes and says (Record, p. 243):

Question. State what was the spirit of the campaign in 1876, as conducted by the Democrats and Republicans.—Answer. On the part of the Democrats to make the campaign thoroughly conservative and conciliatory. I was in all parts of the State, and saw no intimidation by Democratic whites or negroes, white or colored. The only evidence of disorder I saw was in the first Congressional district, where the colored Republican voters endeavored to vote in their own color who wanted to vote for the Democrats. This was not in Georgetown, where they used every effort to drive the colored voters from the Democrats, and I heard threats of violence used by them. I was satisfied that pressure a greater number of the colored people would vote with the Democrats. I believe that this spirit of race proscription was exercised all over the State. It exercised a very powerful and detrimental influence against the Democrats. All the addresses of the Democratic speakers in the first Congressional district were conciliatory. Mr. Richardson accompanied me and took the extreme course of conciliation.

Q. Did there exist any necessity for the proclamations of President Grant?

ernor Chamberlain disbanding the rifle-clubs?—A. In my judgment there was no necessity. The judges all stated that there was no resistance to legal process; in my canvass I saw no evidence of interference with or resistance to law. The whole effort that I made during the canvass was to assure the people of the absolute necessity of preserving peace and abstinence from violence. As soon as the proclamation appeared I advised all the clubs to disband, and at no single meeting attended by me in the State was there an armed organization of men.

Q. What was the effect of these proclamations and of the introduction of United States troops upon the colored voters and upon the election?—A. I think that the presence of the troops produced a great change among the colored voters, from the fact that they were told that the troops were placed here for the purpose of making them vote the Republican ticket. That the troops not being placed where they could have given protection to the colored Democrats exercised an influence injurious to the Democratic cause. I had applications from several places asking that troops should be placed to protect colored Democrats. I did apply to General Ruger; troops were not sent, on the ground that he had not troops enough to send to the particular places. Troops were sent generally in larger numbers in the upper counties where the whites were in majority. In the low country where the Republicans were in majority fewer troops were sent.

Q. You state you saw no intimidation by Democratic whites or negroes against Republicans, white or colored. Were there threats made by Democratic whites, within your knowledge, that they would not give employment or rent their lands to colored persons who should vote the Republican ticket?—A. I heard no threats of this kind, of my own knowledge. I did see that some of the Democratic clubs did say they would not employ those who voted against them. That policy has not met my approbation. All the enunciations I have made called on our people not to have any proscription.

Q. Please state in what way the colored Republican voters, in the first Congressional district, endeavored to intimidate those of their own color who wanted to vote for the Democrats.—A. Most of the information I have came from the colored Democrats themselves, who said that threats were made against them by people of their own color. At the meetings they frequently jeered the colored Democrats; and at Georgetown they followed the procession through the town, using violent language. The prominent colored Republicans and women tried to keep the colored Democrats from the meeting, and there I saw the only act of violence; they threw a brick at my carriage; nothing but the coolness of the Democrats prevented a riot.

Q. You state that the negroes were told that the troops were placed here for the purpose of making them vote the Republican ticket. State whether those who told them so had authority to tell them so?—A. I don't suppose they were told so by authority. They were led to believe this by party managers.

Q. Were the colored Democrats limited to any particular part of the State?—A. No; colored Democrats voted in every county of the State.

Q. Was the proportion of colored Democrats to colored Republicans greater in some parts of the State than others?—A. Yes; the proportion was greater in some parts of the State than in others. In Abbeville, Barnwell, Newberry, the proportion was greater than in Colleton, Beaufort, and Georgetown.

Q. Were there no troops placed in Barnwell, Abbeville, and Newberry?—A. Yes; there were troops there.

E. W. Moise, being called and sworn, deposes and says (Record, p. 241):

Question. Were you in the State of South Carolina during the election held on 7th November, 1876?—Answer. I was, and canvassed the State during the campaign.

Q. What was the policy of the campaign on the part of the Democrats?—A. To make as much exhibition of power as they could, but to avoid any acts of actual violence.

Q. Was there during the campaign any resistance to civil process, or any interruption of the due and legal execution of the laws?—A. I know of none such, and saw none such.

Q. Do you know anything of the introduction of the United States troops in the State, and the effect thereof?—A. United States troops were introduced into the State just previous to the election, and I regard the effect as enabling the colored Republicans to intimidate the colored persons who had previously proposed to vote the Democratic ticket.

Q. State any instance you know of this.—A. I have been informed by my tenants, being colored Republicans, who had proposed to vote the Democratic State ticket and for Mr. Hayes in this election, that they were afraid to do so because of the threats used toward them by other colored Republicans to the effect that they would either be placed in slavery or lose some rights which they then enjoyed if the Democrats went into power, and that the troops had been sent here for the purpose of requiring

the colored people to adhere to their party, and for preventing the white people from persuading them or inducing them to vote the Democratic State ticket.

Q. Can you give any names?—A. I can. The foreman on my plantation in Clarendon County, named Alfred Lemou, informed me in the presence of General Wade Hampton and others at Manning, in said county, that he proposed to vote for the State Democratic ticket, and that the men on the plantation proposed to do the same. He afterward informed me that he had not done so for the reasons above stated.

Q. Do you know of any other instances of intimidation toward the colored people during the late election?—A. I do. I was present at the mass-meeting at Sumter, addressed by Mr. Chamberlain, Mr. Cardoza, William E. Johnson, senator from Sumter, and others. I heard Mr. Cardoza say that the colored man who would vote for the Democrats in this election would deserve to lose his freedom, and I heard William E. Johnson say that the Democrats would treat them as Ehul was treated in the Bible; that Ehul was a portly man like the treasurer; that a petition was presented to him, and that when he asked to read the petition the petitioner advanced to him, and when he got close plunged a knife in his bowels; and so, he said, will the Democrats. They offer you fair promise now, but if you ever let them get control they will lay something on your backs. This was heard by from two or three thousand colored people. I also know that a man named Albert Howell, in the town of Sumter, a colored hackman, was struck by a colored woman with an umbrella, simply because he spoke to her, alleging that she did not permit any colored Democrat to speak to her.

Q. On the day of 7th November, did you see any troops of the United States near any of the polls?—A. Yes. At Sumter I saw two officers and a detachment of United States troops under arms, for three or four days before and three or four days after the election and on the day of election. Their camp was not over four hundred yards from the polling-place. Sumter is in the first congressional district.

James Conner (Record, p. 243):

Q. What do you know of the introduction of United States troops into this State during the canvass, and the effect upon the voters, and especially the colored voters?—A. I know nothing of the introduction of the troops; I only know that they came, and that their coming was accepted by the negroes of the low country as an indication that the government intended that the negroes should vote the Republican ticket. It was generally accepted that the object of their coming was to overawe the Democrats and to prohibit the rifle-clubs, or rather to disband them. In brief, it was to depress and neutralize the Democrats and embolden and strengthen the Republican leaders, and it succeeded and accomplished that work effectually.

Q. What effect had the proclamations of President Grant and Governor Chamberlain disbanding the rifle clubs?—A. I don't think the proclamations had any effect at all; it was the Federal troops enforcing the proclamations which gave life and efficacy to them. I don't think one negro in a hundred could either read or understand the proclamations, but they could all see the United States troops, and understand what they were there for.

Q. What do you know of intimidation by colored voters of other colored voters who wanted to vote the Democratic ticket?—A. I know nothing, except in Charleston County, and there the intimidation of colored voters, Democratic voters, by colored Republicans, was general and very effective. Large numbers who had pledged themselves recanted and said the pressure was too heavy.

Q. Do you know of any actual or threatened violation of the public peace in the first Congressional district, which the civil authorities could not easily and readily suppress?—A. None.

Q. Under whose control has the State government—legislative, judicial, and executive—been since 1868?—A. For the past eight years the

F. W. McMaster, being called and sworn, deposes and says (Record, p. 243):

Question. State what you know of the spirit of the late campaign in 1876, as conducted by the Democrats and Republicans.—Answer. I was actively engaged as canvasser in four counties. In every one extraordinary efforts were made for the conciliation of the negroes. I know of nothing on the part of the whites against the negroes. I have seen some intimidation attempted to be exercised by Radical negroes against Democratic negroes, and have heard of many instances, especially on the part of negro women against colored Democrats. In Columbia, on 3d November, when Hampton addressed the people here, I rode at the head of the procession. There was some Democratic negroes in the procession. There was bands of negro women on the pavements, jibing, ridiculing, and abusing them. The intimidation of colored Democrats by colored Republicans was, in my opinion, general and at times serious. I have no doubt it had great effect in preventing many colored people from voting with the Democrats. I was struck with this at three public gatherings, where I considered it

required a good deal of heroism for a negro to declare himself a Democrat. Two of these meetings were Democratic meetings; the other a Republican meeting.

Q. Did there exist any necessity for the proclamation of President Grant and Governor Chamberlain disbanding the rifle-clubs?—A. There was not the slightest necessity for such proclamation. The State was in profound peace. There was no resistance to legal process. The course of justice was not interrupted, so far as I know. I heard of commotions on the Combahee rice plantations, confined to the negroes.

Q. What was the effect of the proclamations of President Grant and Governor Chamberlain disbanding the rifle-clubs and of the presence of United States troops introduced in the State upon the colored voters?—A. It infused into the colored mind that the time for the forty acres and the mule had come. It paralyzed the negro who was willing to vote with us and emboldened the Republican negroes. They acted with the idea that they were required by General Grant to vote the Republican ticket.

William Wallace, being sworn, says (Record, p. 247):

Question. State what was the spirit in which the campaign in 1876 was conducted on the part of the Democrats and Republicans.—Answer. On the part of the Democrats great activity was used. The State had been ruined by the Republican Government, and they intended to use every lawful and proper means to redeem the State. The campaign was conducted peacefully and in a conciliatory manner. It was the first time that our white people had gone regularly into a canvass with the negroes. They wanted to give the negro the opportunity of hearing the truth, which they had not heard before in any political canvass, and the effect was tremendous. Had things been left to the normal and legitimate influences, I believe the State would have gone Democratic by 50,000 majority.

Q. What was the effect of the proclamations of President Grant and Governor Chamberlain disbanding the rifle-clubs, and of the presence of United States troops introduced into the State on the colored voters?—A. It had the effect of taking away that confidence which the negroes were beginning to have in the native white people of the State again. It made them feel that they were powerless to protect them against those of their own race who were still under the control of their Radical leaders.

Leroy F. Youmans (Record, p. 250):

Q. Was there anything in the condition of the country justifying the proclamation of President Grant and Governor Chamberlain, and the introduction of United States troops?—A. In my judgment there was not. The State was in profound quiet, legal process unobstructed, and the administration of the laws uninterrupted. In fact, up to a very short time before the nomination of Hampton for governor by the Democrats, a large fraction of that party was opposed to any nomination in opposition to Mr. Chamberlain's re-election, the most influential Democratic newspaper in the State ably and zealously advocating that course.

Q. What was the effect of the proclamation and the introduction of the troops upon the election?—A. In my judgment it widened whatever breach may have existed between the two races, and impeded the tendency to union in political action which had been rapidly gaining ground, and very largely increased the Republican vote, colored, and diminished the Democratic colored vote which otherwise would have been given.

Q. Has the registration required by the constitution ever been carried into effect; and, if not, why not?—A. It has not, for the reason that the Republican party, which for eight years has had entire control of all the departments of the State government, and also of the local judiciary and local financial matters in the counties, has chosen to disobey the positive mandate of the constitution.

Cross-examined by Mr. Cavender, for contestee:

Q. Please state in what way the introduction of troops widened the breach between the two races.—A. The published utterances of the governor immediately preceding the proclamations, and the introduction of more troops, threatened material injury to the State, in terms, and naturally induced the belief that the subsequent acts of the governor and President would be dictated with the desire to advance the interests of colored Republicans at the expense of white Democrats.

Q. Please state what utterances of the governor you allude to.—A. Especial allusion is made to his Chamberlain's letter to Col. A. C. Haskell, chairman of the executive committee of the State Democratic committee, published in the papers and widely circulated as a campaign document.

Q. What was the general tenor of that letter?—A. Bitter denunciation of the white Democrats and threats of injury to the material interests of the State constituted its tenor in this regard. The letter itself would furnish the best answer to the question; it was published early in October, 1876.

Q. Do you think that bitter denunciation of white Democrats and threats of material injury to the State very largely increased the colored Republican vote and de-

creased the Democratic colored vote?—A. I think they did, followed by the proclamations, and the introduction of the troops foreshadowed therein.

William E. James, having been called as a witness for the contestant, and duly sworn, testified as follows, to wit (Record, p. 726):

Question. Are you a resident of Darlington County, and were you present at the last general election?—Answer. I am and was.

Q. What is your occupation?—A. Planter.

Q. But for the interference in that election by the State and Federal executives by proclamations and by the introduction of troops into the State, which party, in your judgment, would have carried the county.

(Objected to as calling for an expression of opinion.)

A. The Democratic party. This was conceded by prominent members of the Republican party.

B. W. Edwards (Record, p. 698):

Q. Was the introduction of United States troops regarded by both parties as a political measure?

(Objected to as not being in rebuttal and as being matter of opinion and cumulative.)

A. It was so regarded by the Democratic party, and I believe it was by the Republican. The Democrats so regarded it, because it was entirely unnecessary for any other purpose. When Governor Chamberlain issued his proclamation to the clubs which he styled rifle-clubs to disband, they did immediately break up their organizations and discontinued anything that might be construed military maneuvering, so that there was no pretext for sending United States troops into Darlington County.

Q. What effect had their coming upon the election?—A. It increased the Republican vote and decreased the Democratic vote. It was commonly said (objected to as to what the witness would say as hearsay) that the Republicans told them, the colored voters, that the soldiers were sent there to see that they voted the Republican ticket, and the effect upon their minds and actions verified the statement.

Again at pages 704 and 705:

Q. How do you say that the Democratic vote was decreased by the coming of the troops, when you know that they polled their full strength in this county, and when you have good reason to know that more colored men voted this ticket at the point where the most troops were and the longest stationed, and where you say yourself that more colored men voted the ticket than at any previous election, and where you don't know what the Republican and Democrat vote of the county was?—A. When I say the Democratic party voted their full strength, I meant the white people, but we ought to have carried with us the colored people, and had the prospect of carrying a much larger number prior to the introduction of troops than we did carry. After it was known that troops were to be introduced, I could observe the chilling effects upon the Democratic campaign and the strength it gave the Republican party, the leaders of which used it effectually against us, and thereby diminished the number of Democratic colored votes and increased the number of Republican votes.

Q. What did you hear these leaders say about the troops?—A. I didn't hear them say very much, as they didn't come to our meetings or favor our going to theirs.

A. S. White, a Republican, having been called as a witness for the contestant, after being duly sworn, testified as follows, to wit (Record, p. 710):

Question. Up to a very short time before the 7th of November last, was there any unusual disorder or disturbances of the peace in Darlington County?

(Objected to as calling for opinion and as being cumulative and not in rebuttal.)

Answer. I know of none.

Q. In your opinion, was the introduction of United States troops in this portion of the State pending the late election called for?

(Objected to for the same reasons as the foregoing question.)

A. No, sir.

Q. What was the effect of the introduction of the troops upon the election?

(Objected to for the same reasons as the foregoing question.)

A. It tended to discourage the Democrats and encourage the Republicans.

Q. Was not their coming regarded as a political measure?

(Objected to on the same ground as the previous question.)

A. It was generally so considered.

Q. Did the Democratic organizations of this county, in your judgment, tend to interfere with the freedom of the election?

(Objected to as a matter of opinion.)

A. I think not.

Q. Were there any indications that the Republican voters were deterred, through fear, from voting?—A. I saw none.

Q. Were they not, in your judgment, fully alive to their advantages of numbers, the prestige of previous victories, the moral and physical support of the State and Federal Government?

(Objected to as calling for matters of opinion.)

A. I think they were.

Again, at page 713:

Q. Please state in what way the presence of United States troops affected the election?—A. The impression prevailed that the National Government backed the Republican party in South Carolina.

Q. With whom did this impression prevail?—A. With all classes.

Q. Did the troops in any way interfere with the election, or in any way influence or change votes? If so, state how, and the means used.—A. They didn't interfere in any way, nor did they change votes, unless by their presence.

Q. How did the coming of the troops discourage the Democrats?—A. Only by encouraging the Republicans to vote solidly.

Q. Do you mean to say, when you say that the Democrats were discouraged, that they did not poll their full strength in this county?—A. Can't say that, as I can't say what the full vote was; I mean by being discouraged that they would have polled a heavier vote if the troops had not been here.

Q. How many votes would they have polled if the troops had not been here?—A. I don't know, sir.

Q. How many did they poll?—A. I don't know, sir.

Q. If you don't know how many they polled, or how many they would have polled, how can you say but for the troops they would have polled more?—A. They were in hopes to poll more.

Q. When you say that the coming of the troops encouraged Republicans, do you mean to say that it gave them the assurance of voting as they pleased, or what do you mean?—A. I have answered the question.

Q. Did the coming of the troops, in your opinion, do more with the Republicans than assuring them of a free ballot?—A. I think it did.

Q. What more?—A. They massed a considerable quantity of arms near the ballot-box, in the jail here, which they would not have attempted if the troops had not been here.

Q. I understand you, then, to say that the placing of these guns in the jail was from the influence of the troops upon colored voters?—A. I have answered the question.

Q. Is it not a fact that about the time polls closed the Democrats called upon the troops to guard those arms in jail, and they did so?—A. I cannot say that that is a fact; I communicated this fact to Lieutenant Deams, both in person and by Captain Earle, the supervisor at the poll (on the part of the Democrats as I am informed).

Q. How was the coming of the troops generally considered?—A. It was considered as endorsing the State government and backing it.

Q. Did you not go with the Republicans to the first Republican Timmons ville meeting?—A. I went with J. A. Smith and no crowd at all.

A. C. Spain, having been called as a witness for the contestant, after being duly sworn, testified as follows, to wit (Record, p. 714):

Am a resident of the town of Darling, and was present the 7th of November, 1876.

Question. What was your profession?—Answer. A lawyer.

Q. Can you speak as to the effect of the introduction of the United States troops into the canvass of Darlington County?—A. The introduction of troops into the State of South Carolina produced a very marked effect in the county of Darlington before any troops were ever heard of in Darlington County. The governor of South Carolina had issued a proclamation full of slander of the Democrats, so far as Darlington County was concerned; upon that proclamation the President of the United States acted, on the assumption that the Democrats, with arms in their hands, were using their organization and arms to force the negroes to vote the Democratic ticket. Based upon this slander the military force of the United States were, on the call of the governor, sent by the President of the United States into South Carolina, the result being a widespread impression that the troops were intended to influence the election directly by sustaining one party (the Republican), and in acting antagonism to the other (the Democratic). The ignorant colored voter adopted the view of the governor and President, and acted on it.

(This answer is objected to, as being matter of opinion, and as interpreting the proclamations of the President and the governor, which are already in the case.)

Q. In your opinion were there any circumstances which warranted the introduction of United States forces?—A. There were no circumstances in the county of Darlington warranting the introduction of the troops. The circumstances upon which the troops were introduced were created by the governor himself; they did not exist as a fact.

(Objected to as matter of opinion, and as not being in rebuttal.)

Q. But for the interference of the State and Federal executives, is it or is not your belief that the Democrats would have carried this county?

(Objected to, as calling for opinion.)

A. Before the moral and physical influence of the State and Federal Government were brought to bear upon the election, I did entertain an opinion that the chances of carrying Darlington County for the Democrats was a fair one. I never was assured about it as others. After these proclamations and the introduction of the troops, I noticed a very wide change in the opinions and conduct of the colored people; they became intensely antagonistic in their feelings and conduct to the whites. I heard from a number of colored persons, men and women, that President Grant had taken sides with them, and I have heard them say, in conversations that I have had with them, that they could not vote against the radical ticket.

G. W. Dargan, having been called as a witness for the contestant, after being duly sworn, testified as follows, to wit (Record, p. 729):

Question. Are you a resident of Darlington County, and were you present at the general election of November 7, 1876?—Answer. I am, and was.

Q. Your occupation?—A. Lawyer.

Q. What was the state of feeling between the two political parties here at the time of the campaign?—A. No bitterness in the early part of the contest.

Q. What was the state of feeling immediately preceding the election?—A. Bitter.

Q. Can you account for this?—A. It was the natural result of the prolongation of the contest, aggravated by the proclamations of Governor Chamberlain and President Grant.

Q. In your judgment, what effect had these proclamations, and the threatened actual introduction of troops into the State, upon the two political parties?—A. Loss of thousands of votes to the Democracy.

Q. In your judgment, but for those measures, which party would have carried this county?—A. The Democratic party, by several hundred votes.

Q. What was the purpose of the Democratic organizations in this county?—A. Defensive, so far as I know, and purely political.

Q. Were they military organizations?—A. They were not.

Q. Were you or not an officer of the club at this place?—A. I was.

Q. What has always been your position in politics?—A. Always been conservative. I was a Chamberlain man up to the time of General Hampton's nomination, and then I opposed to General Hampton's nomination.

Q. Have not the Republicans of this county sought to put you in nomination for office?—A. I have been approached by Republicans of some prominence on various occasions and asked to allow my name to be used for office.

W. P. Gee, having been called as a witness for the contestant, after being duly sworn, testified as follows, to wit (Record, p. 734):

Question. Are you a resident of Darlington County, and were you present at the election of November 7th of 1876?—Answer. Yes; I am, and was at and voted at the Fifth Ward precinct.

Q. You live in the Ebenezer neighborhood and are by occupation a planter?—A. Yes, sir, and am.

Q. Did the Ebenezer Democratic club ever drill with arms?—A. They did not.

Q. Do you know anything of arms being sent to the colored Republicans at the Ebenezer preceding the election?—A. Yes, sir; I know that they had them; I saw them with them; they were breech-loading rifles; they said they were State arms.

Q. Had they ammunition?—A. They had accoutrements and cartridge-boxes, and said they had ammunition.

Q. Had they had these arms long before the election?—A. It was a short time before the election that I saw them.

Q. Did they have them after the proclamations of the governor and President Grant?—A. They still had them.

(To all of the above questions and answers relating to arms or ammunition, the contestant's counsel objects: 1st, because it is not in reply; 2d, it is irrelevant to any issue in the case; 3d, as it appears in the answers, the whole matter testified to is a matter of hearsay only.)

Q. After these proclamations, and after the introduction of troops into the

did you observe any change in the colored voters?—A. I did not until they came here; then I did.

(Object to question and answer as cumulative and not in reply.)

Q. In your judgment, what effect had the proclamation and troops upon the colored voters?—A. Those that wouldn't vote for us manifested a spirit of not voting either way, but after the troops came here they said they would vote the Republican ticket.

Q. Then you think that their presence hurt the Democrats in the election?—A. Yes, sir.

Q. If United States troops had not been first threatened and then introduced into the State and county, judging from all you saw and heard among the colored voters during the early stages of the campaign, what, in your judgment, would have been the result of the canvass in Sumter County? Would the election have gone Democratic or Republican?—A. I can't say for the county, as I was away from home very little during the campaign, but I am sure a great many more colored men would have voted the Democratic ticket here at Bishopville, had it not been for the introduction of United States troops into the State and county.

Q. State the facts on which you base this judgment.—A. Before the troops were introduced into Sumter County, numbers of the colored people expressed a desire and willingness to vote the Democratic ticket with the white people; but after the United States troops came they ceased all communication with the whites, submitted themselves entirely to the dictation and control of their leaders, and appeared to consider the presence of the troops here as an indication of the active support of the Republican party by the United States Government, and the reason why they must vote the Republican ticket.

T. D. Foxworth (Record, p. 685):

Q. Was there any threats or intimidation used by Republicans against their own color during the campaign? If so, state all you know about this.—A. Yes, there were threats. I did not hear any threats, but several of the colored men told me during the campaign, before the election, that they were afraid for their lives and property if they voted the Democratic ticket. They said they were threatened so by the colored people in the neighborhood. Several of the colored voters told me that they wanted to go with the Democrats and would vote the Democratic ticket, but they were afraid for their lives and property.

Q. If United States troops had not been first threatened and then actually introduced into the State and county, what would have been, in your judgment, the result of the canvass in Sumter County?—A. It would have been stronger for the Democrats. I think the county would have gone Republican.

J. W. Stuckey (Record, p. 672):

Q. If United States troops had not been first threatened, and then introduced into the State and county, judging from all you saw and heard among the colored voters during the early stages of the campaign, what, in your judgment, would have been the result of the canvass in Sumter County? Would the election have gone Democratic or Republican?—A. My judgment and belief is that if the United States troops had not been sent to the State and county the election would have gone Democratic.

Q. State the facts upon which you base this judgment.—A. Before the troops were sent into this county, numbers of colored voters expressed a desire and intention to vote the Democratic ticket with the white people, but after the United States troops came they changed their intentions, appearing to be influenced by the impression that the troops were sent here to see that they did vote the Republican ticket.

M. E. McDonald (Record p. 667):

Question. What is your age, and where did you live during the campaign?—Answer. Shiloh Township, Sumter County; age thirty-four.

Q. Where did you vote on 7th November last?—A. At Lynchburg.

Q. Did you see John H. Legare, United States deputy marshal, that day?—A. I did.

Q. Were any troops stationed at Lynchburg on that day?—A. Yes; about 150 yards from the polls.

Q. Did John H. Legare, United States deputy marshal, say to you or within your hearing, that those troops were subject to his orders?—A. He was reading a paper, which he said was United States law of elections. He said the campaign was over; that all we could do now was to offer a man a ticket; if we went any further we would render ourselves liable. "Those United States troops yonder are sent here to arrest any man that I will point out." He said he did not want to arrest any one, but was sorry he would have it to do. Said there would be fifty arrests at Bishopville; that the man who had been sent there was a perfect tyrant.

Q. Was there not, from United States deputy marshal's conduct and threats of what he would do with the troops, a wide-spread intimidation among the democratic vo-

ters; and are you not satisfied that many votes were lost to the democrats burg precinct by reason of this conduct of Legare's?—A. Yes, I am; to bot

J. T. McIntosh (Record, p. —):

Question. What is your age; where were you during the campaign?—Ans twenty-six; was in Lynchburg Township, Sumter County.

Q. Were you at Lynchburg poll on 7th November last?—A. Yes.

Q. Did you see United States Deputy Marshal John H. Legare about the day?—A. I did.

Q. What did he say?—A. I heard him say that the United States troops we to his orders, and would arrest any one he ordered to be arrested.

Q. Were you afraid, along with the other people, to electioneer?—A. Yes

J. M. Sanders (Record, p. 663):

Question. What is your age, and where did you live during the campaign? I am fifty-five; Lynchburg Townuship, Sumter County.

Q. Did you hear J. S. Richardson speak at Lynchburg during the camp Yes; twice, I think; once certainly.

Q. Did he advocate force or violence as a means of carrying the election he used very strong arguments that if the colored Republicans would go Democrats we would have a better government.

Q. Where were you on day of election?—A. I was here in Lynchburg d latter part of the day.

Q. Did you hear of J. H. Legare, deputy United States marshal; and if so A. I heard that he was taking down the names of many persons, and it was that they would be carried to Charleston.

Q. What were the charges against the parties?—A. Those who took an a in electioneering were to be put on the list; also for alleged acts of intimid was a prevailing rumor. Many of my friends warned me to "look sharp."

Q. Such were your fears, engendered by these rumors, that you were ver; in electioneering; was it not so?—A. I came here to exercise my privileg citizen of speaking to the people in the mildest and gentlest manner to in to vote the Democratic ticket; but I at once abandoned all idea of electione kept out of Legare's way.

Q. Did you hear that United States troops wer under Legare's orders?—A. so; I was confident of it.

Q. How far were the troops from the polls?—A. About two hundred yar and in view outside of buildings, I suppose.

Q. Do you know anything of intimidation of blacks by blacks?—A. Cann stances, but I am satisfied that many colored persons who desired to vote t cratic ticket were intimidated by their colored neighbors.

A. H. Frierson (Record, p. 661):

Question. What is your age?—Answer. Fifty-six.

Q. Where did you live during the election?—A. Lynchburg Township County.

Q. Where did you vote?—A. At Lynchburg:

Q. Judging from what you saw of the conduct of colored voters before duction of the troops and after their introduction, do you or do you not thin call for an introduction of troops had a decided effect upon the voters?—A. had.

Q. How?—A. I think it prevented some of the colored voters from voting ocratic ticket. It had been reported among the colored people that if they Democratic ticket they would be arrested by the troops.

Q. Do you know of any blacks intimidating others from voting the D ticket?—A. Not in my personal observation, but to the best of my knowledg lief, there was a wide-spread intimidation of blacks by blacks.

Q. J. H. Legare testified in his examination for Rainey that the troops w mile off and not in sight; is this true or false?—A. It is false. They were full and within 200 yards of the polls.

Q. J. H. Legare says that he did not say to any one on the day of the e Lynchburg that the troops stationed here were subject to his orders and wo whoever he directed arrested. Do you know this to be false?—A. I know false.

Q. Did Legare speak to you on election-day on that point?—A. Yes. He troops (pointing to the tents which were in sight) are subject to my order his badge as United States deputy marshal; said he was deputy marshal, to that he had authority over the troops.

Q. Did Legare electioneer on that day?—A. I do not think he did.

Q. Did he say anything to prevent electioneering?—A. He said the canvass closed yesterday at 6 o'clock, and there should be no more electioneering.

Q. Did not the statements of Legare leave the impression on your mind that electioneering on that day was a violation of law of the United States?—A. Yes; and that we were liable to be arrested for it, and that he had the authority.

Q. Were you not yourself so intimidated by the conduct and statements of J. H. Legare as to deter you from taking an active part in electioneering that day?—A. Yes.

Q. Were not the white people generally intimidated from the same cause?—A. Yes; several expressed themselves to me in that way.

Q. Did Legare take the same pains to stop colored Republicans from electioneering?—A. No.

Q. Were the negroes very active?—A. They were. I have seen as many as three after one, electioneering.

R. Witherspoon (Record, p. 655):

Q. What is your opinion of the effect of the introducing the troops?—A. I think it went against the Democratic party.

Q. Why?—A. I think it made many vote the Republican ticket who would not have done so, or would have staid at home.

Q. Do you think the Republicans could have carried this county without the introduction of United States troops into the State?—A. I do not.

Q. Do you know any instances of colored Democrats being intimidated by colored Republicans?—A. No; not in my personal observation.

Q. To your best knowledge and belief, was there or not a wide-spread intimidation by colored Republicans of men of the same color who wished to vote the Democratic ticket?—A. There was.

J. A. Mills (Record, p. 656):

Q. What was the effect of the introduction of United States troops here upon the election?—A. It was certainly very detrimental to the Democratic cause.

Q. Had it not a bull-dozing effect upon the colored voters?—A. It certainly kept them in the Republican ranks, and prevented them from joining the Democrats.

Q. To your best knowledge and belief, was there or not a wide-spread intimidation by colored Republicans of colored men who wished to vote the Democratic ticket?—A. There was. One colored voter told me he would join the Democrats if he was not afraid.

J. H. Wilson (Record, p. 654):

Q. What do you think of the effect of introducing United States troops?—A. I think it was detrimental to the Democrats. One colored man asked me if he would be allowed to vote the Democratic ticket since the United States troops had arrived. Said he had been told by other colored men that they would not be allowed to vote the Democratic ticket.

Q. What effect did the introduction of United States troops have upon the election in this county?—A. I think it likely if they had not come the Democrats would have carried it.

Q. To your best knowledge and belief, was there or was there not a wide-spread intimidation of colored voters?—A. There was.

J. H. Cooper (Record, p. 651):

Q. Have you not reason to believe that there was wide-spread intimidation?—A. I believe that there was. I was told (objection by contestee) by a colored man that he would vote the Democratic ticket, but feared that the colored people would double-team on him and beat him to death.

Q. Were there other evidences satisfactory to your mind?—A. There were.

Q. Do you know if any United States troops were introduced into this county during the election?—A. Yes; saw them at Sumter.

Q. Where were they stationed?—A. At Sumter Court-House.

Q. Is that one of the largest voting-precincts in the county?—A. It is.

Q. What is your opinion of the effect upon the colored voters of the introduction of United States troops into the county during the campaign? (Objection by contestee.)

A. I think hundreds voted the Republican ticket who would have voted the Democratic ticket, or would not have voted at all.

Q. Have you any idea that the county could have been carried by the Republicans without the use of United States troops?—A. My opinion is it would have gone Democratic.

Q. Why do you say so?—A. I judge from what has been told me by colored men.

At least two of them told me that the troops were sent here to compel the colored people to vote the Republican ticket.

J. A. Mayes (Record, p. 647):

Q. From your personal observation, what effect did the presence of United States troops have in the county upon the voters?—A. Not being in the part of the county where troops were stationed, I know nothing of my own personal observation.

Q. What is your opinion as to the effect upon the colored voters of the belief that United States troops were in the county?

(Objected to.)

A. Think it caused a large portion of Republican voters to think that United States troops were brought here for the purpose of compelling the Republican voters to vote against the Democrats. This was and still is my opinion.

Q. Do you believe that the presence of United States troops had a bull-dozing effect upon the Republican voters?

(Objection by contestee.)

A. Yes; I think it did.

Q. The alleged reason of Governor Chamberlain, in his proclamation calling for troops, do you believe to be the real reason?

(Objection by contestee.)

A. I do not.

Q. What was, in your opinion, the real object?

(Objection by contestee.)

A. I think the real object was to keep the Republican voters in line, and to prevent them from voting the Democratic ticket.

Q. Was or was it not done to bull-doze colored voters?—A. That was my impression Governor Chamberlain, seeing that the Democrats were thoroughly organized, had troops brought into the State to counteract that.

W. J. Rees (Record, p. 636):

Q. You state that had not United States troops been introduced into Sumter County, more colored people would have voted the Democratic ticket; why so?—A. I think the colored people had begun to show a disposition to listen to Democratic speakers, and come out to their meetings; and, as well as I can recollect, they stopped coming to Democratic meetings after the troops arrived. Only those who were members of the Democratic clubs came out after the troops came.

Q. You state that if any difficulty should arise, the troops were here to help the Republicans; what do you mean by that?—A. I was told by a colored Republican that he had been told by his leaders that he would not be allowed to vote, and that the troops were here for the purpose of seeing that they would be allowed to vote.

John H. Burgess (Record, p. 632):

Q. How did the appearance of troops here have the effect of making the colored Republicans believe that the United States Government wished them to vote the Republican ticket?—A. Before the troops came here I think the colored people were inclined to listen to us, but after the arrival of the troops their behavior changed.

Q. Did the troops interfere to prevent the colored people from listening to you?—A. They did not directly, except through the influence of their presence here.

Q. How did their presence here interfere?—A. I believe that they were told that the troops were sent here for the purpose of keeping up the Republican ranks.

Q. From all you saw and heard during the campaign, what, in your judgment, would have been the result of the election in Sumter County had the United States troops not have been introduced into the State and into the county?—A. I think the Democratic candidates would have received very many more votes than they did receive.

Q. Give the reason on which you found your judgment?—A. In my opinion the appearance of troops here had the effect of making the colored Republicans believe that the United States Government wished them to vote the Republican ticket.

But your committee can cumber this record with no further extracts from the testimony on this point. Many other witnesses testified substantially as those whose evidence is cited. There cannot remain a doubt in the impartial mind that the sending of the troops of the United States into South Carolina and the uses made of their presence did produce a marked and controlling effect upon the result of the election, amply sufficient of itself to justify your committee in declaring the election null and void.

But even had no effect been proven, we are not prepared to say but that their very presence at the polling-places, the mere fact of their being

It, without proof of effect, would of itself be sufficient to set aside and null the election. Our English ancestors, from whom our laws and basis of constitutional freedom are derived, have been wisely jealous of the slightest tampering or interference with an election by the Government, and especially through its armed forces. Over one hundred years ago an English statute declared the will of Englishmen on this subject as follows:

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons in Parliament assembled, and by the authority of the same, That when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or any member or members to serve Parliament, shall be appointed to be made, the Secretary at War for the time being, or in case there shall be no Secretary at War, then such person who shall substitute in the place of the Secretary at War, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders, in writing, for the removal of every such regiment, troop, or company, of other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place where such election shall be appointed to be made, out of every such city, borough, town, or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, aforesaid, until one day at the least after the poll to be taken at such election shall be ended and the poll-books closed.

It is saddening to the political student to read this statute and then reflect that one hundred years later a Government which boasts its freedom the most enlarged and enlightened that men have ever enjoyed, should send troops into the very presence of the voters to overawe and control an election.

And another, the greatest of law-writers, perhaps, declares:

And as it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal and strongly prohibited. For Mr. Locke ranks it among those breaches of trust in the executive magistrate which, according to his notions, amounts to a dissolution of the Government, "if he employs the force, treasure, and offices of the society to corrupt the representatives or openly to pre-engage the electors and prescribe what manner of persons shall be chosen. For thus to regulate candidates and electors and new-model the ways of elections, what is it," says he, "but to cut up the Government by the roots and poison the very fountain of public security!" As soon, therefore, as the time and place of election, either in counties or boroughs, are fixed, all soldiers quartered in the place are to remove, at least one day before the election, to the distance of two miles or more, and not to return till one day after the poll is ended. (Blackstone's Commentaries, vol. 1, p. 177.)

And this has been the underlying doctrine of all English decisions in cases of interference with elections.

At an election held for member of Parliament for Westminster, over one hundred and thirty years ago, by order of three magistrates, a body of English troops were marched up and halted in the church-yard of St. Paul, Covent Garden, very near the polls, where the balloting was proceeding. Upon being informed of this fact by the Speaker, the House of Commons passed unanimously the following resolution:

That the presence of a regular body of armed soldiers at an election of members to serve in Parliament is a high infringement of the liberties of the subject, a manifestation of the freedom of elections, and an open defiance of the laws and constitution of this kingdom.

And by the order of the House the three offending magistrates were arrested and brought to its bar and compelled to kneel, in which position they were reprimanded by the Speaker for the breach of English liberty in daring to procure the presence of troops at an election for member of Parliament; and this was history thirty-five years before the firing of the first gun of the American Revolution; it was law and recognized as such by a Government which then claimed the right to

impose taxation without representation, and which had not relaxed the prerogatives of the crown and taken on that spirit of liberty which distinguishes the British Government to-day. The underlying idea was that the representatives of the people should come free and untrammelled from a free and untrammelled people; that the body of the Commons, being the representatives of the people and a check in favor of popular liberty against the kingly power, should be in the method of their election free from all kingly influences. For if the King could interfere and control the elections, and overawe the people, and occasion the election of his creatures and partisans, then would this great representative body but be the slave and tool of the King, and the triumph of the one-man power over the people was accomplished. Such, indeed, is the spirit and tenor of all the English decisions.

But we are asked by contestee's counsel to go into a critical examination of the testimony and to endeavor to ascertain the exact results of the intimidating influences. He contends that undue influence in an election must be shown to have affected the result materially. In this he is in the main correct. In the entire district over 34,000 votes were polled. Only about 500 witnesses were examined, and many of these in regard to facts other than the subject of intimidation. It is impossible to tell the exact change produced by the intimidating influences, nor is it essential. It is sufficient that three hundred witnesses, white and colored, Democratic and Republican, and some of them men of the highest character, swear positively to the general wide-spread and powerful influence and change produced by the intimidating influences. McCrary's Law of Elections lays down the rule, p. 326, which we regard as correct: "If the violence and intimidation have been so extensive and general as to render it certain that there has been no free and fair expression by the great body of electors, then the election must be set aside, notwithstanding the fact that in some of the precincts or counties there was a peaceable election." And in the Canada case, already quoted from, Justice Ritchie said, in delivering his opinion: "And though I have no means of computing or ascertaining the exact extent of the terror or undue influences, it was still in my opinion such and so great an interference with the freedom of the elections as demands that the election should be annulled." That these undue influences were general and powerful and caused the greatest change is admitted by the counsel for contestee, himself a Carolinian and a gentleman of great attainments.

On pages 58 and 59 of his brief, after giving a fearful picture of the ruin and desolation brought on South Carolina by her carpet-bag rulers he continues:

At last this condition of things became unendurable. The better class of Republicans, the more intelligent and industrious of the colored people themselves, felt and acknowledged that social existence was in danger.

Early in 1876 preparations were made for the fall elections. At first it was uncertain whether the white Democrats would join the better leaders of the Republican party and enable them to reform and control their following. In many portions of the State the colored people themselves manifested a willingness to get rid of their corrupt and insolent leaders. The Democratic party finally determined that their only security was to get absolute possession of the Government. They nominated General Hampton and a full ticket. This nomination was a resurrection of life and spirit, almost, I believe, entirely, unparalleled. From the mountain districts, in which the white Democracy had a sure majority, through the more doubtful middle districts, to the very heart of the coast districts, where the vast colored majority were concentrated, the enthusiasm spread. At first, and to some extent, it caught the sympathy of the impulsive negro; but, as it spread, the Republicans found that for them it was either union or destruction. The character of the ticket, the declarations of the campaign, the astounding strength and passion of the movement, satisfied the Republi-

aders that there was no compromise to be negotiated. It was either victory or such defeat as would sweep them out of the State. They selected as their leader Governor Hamberlain, whose culture, ability, and honest effort at reform during his past administration made him by far the best representative they could present to those who, outside of the State, were watching the progress of the conflict. They appealed to the colored man with even more vehemence than when they originally won him. There was not a prejudice, an apprehension, which they did not arouse skillfully. They armed him with the prospect of disfranchisement, return to slavery. They excited his wives and daughters with the fear of restoration to their menial condition and the prohibition of all the small vanities in which they delighted. They, to a large extent, succeeded, and, as a body, the negroes, especially in the old large slaveholding districts—the former districts of large estates and great owners—went back to their old convictions. They dropped off from the Democratic clubs. They were shy of talking politics as in the early summer. Their preachers preached and prayed, and their women stormed, and, as a general rule, they all voted the Republican ticket.

Here, then, is the fair and square admission of the social, spiritual, and actual intimidation of the colored people over those of their own race who thought to be free enough to vote as they pleased.

And on page 62 he broadly admits the intimidating influences of the troops *by reason of the arguments drawn from their coming into and presence in the State and near the polls.* He says, page 62:

The campaign of 1876 was a contest between the intelligence, character, and property of the State on one side, and a ruinous and corrupt administration on the other. The interests at stake were so obvious that great numbers of the colored people hesitated, decided to abandon their party, and promised to vote with the Democrats. But the sending of troops into the State made them aware that the great Republican party in the North and the administration did not sympathize with the Democratic movement, thought it dangerous for the colored people and threatening to the national supremacy of the Republican party, and under this influence the vacillating body of colored voters went back to their party allegiance.

The admission of his counsel is the admission of contestant; and here is his broad, open, frank admission, that the coming of the troops made a great change in the minds of "great numbers" of the colored voters. And with this admission on his lips how can he expect to retain his seat here? He admits that he holds it, not by the choice of a free untrammelled people, but by the majority of a herd of frightened, disarmed, duped, and terrorized voters.

But contestant, whose pacific and manly course during the election, as shown by the record, and whose consummate ability in the management of his cause, or rather the cause of his people, has won the highest respect and sympathy of the committee, sets forth and shows that the intimidating influences set on foot by the Republicans did not reach or affect the entire district; that troops were sent into but four of the eight counties that constitute the district, and he contends that the intimidated counties and precincts should be thrown out, and the peaceful counties and precincts counted, which, being done, would elect him and entitle him to the seat. And he cites the cases of *Wallace v. Simpson*, *Sheldon v. Hunt*, *Sypher v. St. Martin*, *Darrall v. Bailey*, 2d Bartlett, pp. 699 to 754.

It is very true that these cases were decided by a Republican Congress. They do lay down the doctrine contended for by the contestant. Party expediency might now suggest that the Republican party that made these precedents ought to be bound by them. If we should treat these decisions as containing the true doctrine of elections, if we could regard them as other than expressions of partisan intolerance, there would be no difficulty in reporting a resolution awarding the seat in contest to the contestant.

But in the first place the undue and illegal influences exercised by the Republicans upon the colored people through their social, religious, and semi-military organizations extended nearly throughout the entire dis-

strict; and in the next place we find troops sent into four counties the aggregate vote of which was 21,691, while in the other four weaker counties, where there were no troops, the vote was but 12,987. To exclude 21,691 votes out of a total of 34,678 votes and count the remainder and declare a result would be to permit an election by a minority. This is admissible, it is true, where the election was fair, and all had an opportunity to vote as they chose and failed only through apathy. Such is not the case here where 34,678 voters cast their ballots. But a very large portion of these, sufficient to have changed the result, cast their ballots under such undue and illegal influences as to utterly destroy the fairness and freedom of the election. Under such circumstances we cannot admit that it would be right to permit a minority to elect. In the case of Sypher, cited above, the report of the committee which laid down the doctrine of minority elections was expressly overruled, *vide* McCrary's Law of Elections, pp. 324, 325, 326.

The true rule in such cases seems to your committee to be, that a minority can only elect where the majority, with full opportunity and facility to vote as they choose, unrestrained and untrammelled by undue influence, refrained through apathy or neglect from voting. But where undue influence, terrorism, intimidation, or illegal influences have been brought to bear upon the great mass of the voters, and they have been influenced, and have voted subject to these influences, although the full and accurate extent of such influence cannot be arrived at, the entire election should be voided, although a minority may have voted, free from such influences, and for this reason: The entire people in such case evinced a desire to vote. The right of the majority to rule is fundamental. In such a case the will of the majority is defeated, *not* from apathy, but from *undue influence*. The true remedy is to void the election, remove the undue influences, and give the majority that opportunity to rule which is its undoubted right.

Your committee trusts that the day of sending troops to influence and carry elections has gone by forever. In the case of South Carolina, in 1876, no more flagrant violation of law and utter disregard of the Constitution of the country and the rights of States and people was ever shown, even under the most tyrannical forms and administrations of Government.

Your committee believe that troops were sent into that State for no other purpose than to carry the election. And in this view, they solemnly declare that, in their opinion, any election in which the influences of armed soldiers are apparent to any general extent, in which the Federal Government has sought to interfere with its armed forces, and has interfered so as to cast doubt upon the result, ought *ipso facto* to be voided. Such influence is poisonous to the very life of free institutions. It should be checked with stern and prompt resentment by voiding and annulling any election where such interference has occurred, and the influence is general, although impossible to estimate it.

After full and patient investigation of this case, your committee conclude that no full, fair, or free election was held in the first Congressional district of South Carolina in November, 1876; and therefore report the following resolution and recommend its adoption:

Resolved, That there was no free, fair, and peaceable election in the first Congressional district of South Carolina in November, 1876, and that neither Joseph H. Rainey nor John S. Richardson is entitled to the seat from said district in the Forty-fifth Congress by virtue of said election, and that said seat is hereby declared vacant.

Mr. HISCOCK submitted the following as the

VIEWS OF THE MINORITY.

Minority of the House Committee on Elections beg leave to submit the following report:

We understand the majority of your committee to recommend Mr. Rainey's election to this House be declared null and void, and his seat vacated, upon two grounds:

First. The colored electors of his district were deprived of the free exercise of the elective franchise by fear of violence to their persons or property, or social ostracism by people of color, and to an extent to render it doubtful, except therefor, if he, Mr. Rainey, would have been elected; and,

Second. The presence of United States troops in the Congressional district upon and immediately previous to election day, coerced and unlawfully influenced the colored electors to vote for Mr. Rainey to an extent to render it doubtful if he, Mr. Rainey, would have been elected apart therefor.

The majority report indulges extensively in the history of the State of South Carolina for the years intermediate the close of the war and the election; or the opening of the canvass preceding the same.

The record submitted in this case fails to furnish the evidence of the alleged, and, in our judgment, the wailings over the real or fancied past wrongs of the State are as much out of place in the report as a discussion of the causes of the war, or any of its results, would be.

Our examination should be limited to the issues involved, and we content with disappointment it should be deemed proper in this case to make a free use of the stock in trade of the stump-speakers during the last ten years to flame the minds of the majority up to the point of dismissing, untried, as we believe, a colored Representative from South Carolina from the floor.

And it seems to us the inflammatory appeal is a confession of the weakness both of facts and logic upon which to base the action recommended to the House.

We will first examine the proposition of intimidation of colored electors by the colored people and social ostracism among themselves on account of difference in political views. And we will at the outset call attention to the fact that there is no law in this or any other country denying a popular government and the elective franchise making it a crime for those of adverse views to refuse to associate together. On the contrary, the social relations in political organizations are cultivated and properly strengthening them.

It is a notorious fact in this country, Presidential elections are heated; passions of the people, male and female, aroused; angry discussions are of the most frequent occurrence, even between members of the same family and of the same church. The press appeals to the passions; monster public meetings are held by the parties respectively; night as well as day is given to political discussion; mottoes and signs, demagogues and statesmen vie with each other often in misstatements of fact or ridicule. The business of the people is in part suspended. Men pour out their money freely for the expenses of a campaign, to the end it may be conducted upon a plan to create excitement. We have stated the facts in regard to a Presidential campaign in the

most temperate community in the United States; and upon election day scarce a poll but will have witnessed heated political discussions between personal friends; and we confidently appeal to the record in this case nothing occurred among the colored people in Mr. Rainey's Congressional district more violent, there were no more extreme disturbances of the social relations on account of political differences among them, than we have described, notwithstanding so much to which we shall refer calculated to provoke extreme excitement.

We now invite attention to the State of South Carolina.

General Hampton was nominated for governor of that State by the Democratic party about August 15, 1876.

We will grant, if you please—and it is doubtless true—his supporters believed all that has been stated of misrule in the State.

It was the determination of his party to elect him; believing in the misrule, as they did, that they were subjugated to the colored race and white adventurers, they were determined to regain the government of the State. Paint as vividly as you may their real or fancied wrongs, and the same language will measure their excitement, their anger, and their intolerance.

Previous to the nomination of General Hampton "rifle-clubs" and "saber-clubs" had been formed.

We shall, further on, insert brief extracts from the evidence establishing the fact; and we charge the record is replete with it; and we charge there is no conflict of evidence upon the point.

The nomination of General Hampton was followed by public meetings, addressed by him usually, and in the first Congressional district by the contestant also. At these public meetings appeared bands of armed men, armed with pistols and sabers or guns, mounted on horseback. It was not an infrequent occurrence. Hundreds thus armed and mounted would be in line—on one occasion as many as 1,500 men. They charged through the streets; they were sometimes attended with artillery, which was discharged. When Republican meetings were held, bands of armed men, supporters of Hampton, attended them, and demanded for their speakers to address the meetings. But we can scarcely describe the condition of affairs more briefly or graphically than is done by the evidence.

Testimony of James D. Blanding (page 29):

Q. How long before the election was the rifle-club formed?—A. Long before the campaign opened.

Q. Is that the circular you issued?

(Circular produced and offered in evidence; no objection.)

A. It was, and was widely distributed. It was the instructions of the State executive Democratic committee.

Page 29:

Q. How many rifle-clubs were formed in the county of Sumter?—A. I heard of two, one saber and one rifle club in Sumter.

Page 28:

Q. Did you not, on Hampton's day, see a large number of horsemen?—A. I saw them. They were Democrats.

Q. Did those parties have side-arms?—A. Yes; I saw some men with pistols.

Q. What was the object, on Hampton's day, of having those men assembled?—A. I suppose to show the numbers of the Democratic party.

Q. Were they not for the purpose of overawing the Republicans?—A. I cannot say; I saw both parties meet.

A. J. Moses (page 32):

Cross-examined by Mr. D. D. McCall:

Q. What was the object of the formation of the rifle-clubs and saber-clubs?—A. To protect the members from the invasion of an enemy.

Q. What enemy did you hear of?—A. None.

Page 33:

Q. Was there apprehension in the community of violence?—A. I know of none.

W. A. Cooper (page 39):

Q. Did you belong to the rifle-club at Mayesville?—A. I did until Chamberlain's proclamation.

Q. What was it formed for?—A. For home protection.

Q. If there was general peace, why raise a rifle-club?—A. We wanted to be prepared for the worst, and we did not know what was coming.

Q. How often did it meet?—A. It only met twice to my knowledge.

Q. Had they officers, and how were they known?—A. We had a captain and an orderly sergeant.

Q. What sort of gun did you have?—A. A double-barreled shot-gun.

Q. How many of the company had rifles?—A. A good many got rifles just before Hampton's election, and some got guns afterward.

James A. Mills (page —):

Redirect:

Q. You are asked as to the arms owned by the rifle-clubs referred to; now, was said arms just the shot-guns or other arms which the farmers had for years?—A. They were.

Q. What was the purpose of the organization?—A. Mutual protection, friendly intercourse, and to aid the proper authorities in preserving peace and order.

E. H. Dean sworn (page 377):

Q. Were you at the first meeting at Timmonsville?—A. I was.

Q. Please state what you saw that day.—A. When we got there we found about 1,200 or 1,500 Democrats, armed and dressed in red shirts, with rifles, double-barrel shot-guns, and pistols. The Democrats were anxious to have a joint discussion, and asked the county chairman would they agree to it. He replied that he could not tell them until the rest of the speakers would arrive. When B. F. Whitmore, with the rest of the speakers, came, Colonel Law, the Democratic county chairman, with several others, consulted with Mr. Whitmore and others of our speakers as to a joint discussion, and he told him that he would not have a joint discussion under any circumstances with them, for they had defied him to come there to speak, and they would bring on a row. The Democrats said that if they spoke at the stand they would have a joint discussion, and we moved to another place. They sent the committee twice again for a joint discussion, which was put to the meeting and refused. Afterward they came up before we concluded the speaking and surrounded us on all sides.

Samuel McDuffie (colored) sworn (page 420):

Question. Where do you live, and how long have you lived here?—Answer. Been living in Sumter since shortly after the emancipation.

Q. You are familiar, I suppose, with the character of the last campaign?—A. I am.

Q. Was the campaign very exciting and hotly contested?—A. It was.

Q. State what sort of a campaign was it; what was done by the Democrats during the campaign.—A. Persuaded the colored people to come over and vote with the Democrats; if not, that they would be discharged.

Q. Did you see anything like rifle-clubs or organizations?—A. I have.

(Objected to as leading.)

Q. Where did you see them?—A. In Sumter; they were drilling with guns; had several shooters.

Q. When was it you saw the rifle-clubs drilling with guns?—A. Before the election and after the election; saw them drilling night before last.

Harrison Weatherspoon sworn (page 433):

Q. Have you ever seen the rifle-club at Bishopville, or how did you know there was one?—A. I been up there; saw some of their guns and accouterments, and was told by Tyler Dixon, a colored Democrat, that one was in existence there.

Q. Will you say on your oath that the rifle-club at Sumter ever drilled after Governor Chamberlain's proclamation disbanding the rifle-clubs, until the election was over?—A. I cannot say on my oath that they drilled after the proclamation was issued, but I can say this on my oath, that they were marching through the streets with their guns after night after the proclamation was issued.

Q. How is it that you have said, in your answer to the examination-in-chief, "that they drilled once or twice every week"?—A. I said that the rifle-club, before the election, did drill once or twice a week at the time I found it out.

Q. Were there any Democratic rifle-clubs in the county?—A. They were, and they drilled once or twice every week.

Q. About what time in the campaign did these clubs commence drilling?—A. T. commenced drilling four or five weeks before the election.

W. I. Andrews, testifying of the Hampton meeting held October 1876, says (page 478):

Q. Please state any instances of violence done to Republicans by Democratic organizations.—A. On Hampton's demonstration a large crowd of mounted men—between 500 and 1,000—some with pistols, and also an artillery company from Columbia, here, which paraded through the streets, the artillery firing in the heart of the town at night, creating a great fear among the Republicans, both in the country and town; seeing such crowds of mounted men, and the way they went on, a great number of the Republican voters got scared. To keep them from being frightened, Republican executive committee made and gave instructions throughout the county that every Republican voter appear in the town of Santee on the next Saturday, the purpose of listening to speeches from speakers from abroad, and a large number came to town mounted, as instructed. On the same day a large number of Democrats came to town mounted, rode through our ranks two or three times, and the Republicans got thoroughly frightened, saying that there was going to be a row. Our meeting was disturbed once or twice in the court-house by the Democrats, who and colored. At Bishopville, also, we went up there to make a speech; about hundred mounted Democrats were in the town; cursed our men as we passed through and we were informed that they intended to break up our meeting if we spoke that day. We went about half a mile from the village and had our meeting there.

H. M. K. Dargan sworn (page 353):

Question. State what happened on that day.—Answer. On leaving Darlington, about 9 o'clock a. m., about seven miles from here we met the Timmons ville rifle-club, about 120 strong, with red shirts, red flannel around their hats; some had yellow shirts, red flannel around their hats. A few words passed between Democrats and Republicans. Some of the Democrats said that we would meet to-night on the way back, and we you then. We then went on to Timmons ville. About an hour after getting there speaking commenced; during the speaking things were very quiet. After the speaking was over we had a torchlight procession—marched around the town; coming out town we met the same rifle-club returning, and they attempted to break through procession, and they said, "You will have to go around, as we are not going to go the way." We thought best to go around them; after we gone around them they went on to Timmons ville.

Q. Where were you on the day of election?—A. At Timmons ville.

Q. Do you know anything of colored men being shut up the night previous to election in that town?

(Objection to question as soliciting answer.)

A. I do. I got there on the morning of the day of election about 5 o'clock; work up town, I heard a crowd of men in a hall. I asked some one outside what they were doing in there; they stated that the Democrats had shut these colored men up in the night previous to keep them from deceiving the Democrats in voting the Democratic ticket. I staid there until it was time for voting, and I saw about twenty-five or thirty colored men coming out, and a white man had each of them by the arm. I follow them to the place of voting; after each white man voted, the white man would hand a ticket to the colored man he had by the arm and make him vote it, and both would come out together after they had so voted, and then would turn the colored men loose. About six white policemen were at that poll, and prevented Republicans from voting until that crowd got through voting. During the day white Democrats came to the polls dressed in different costumes, representing different rifle-clubs, some with the pistols strapped outside of their clothes; not more than twenty or twenty-five white men were there that day, except dressed as above. Pistols were drawn once on a colored man account of his voting the Republican ticket; also I was threatened for discharging duties as a deputy United States marshal, and they went on so bad that I had to leave on the United States troops there. After they drew a pistol on that man, I went up him, trying to quiet him, and they made threats to me that if I did try to quiet him they cursed me and said that they would shoot hell out of me before I would get away from there. I told them that I was a United States deputy marshal, and in the discharge of my duties, and they told me they did not give a damn for my marshalship. While writing a note to the commanding officer of the soldiers these papers got away. While counting the votes, the house where the polls were in was crowded by both parties. I heard a Democrat say that if the Republicans outcounted them that poll that they raise hell with them and take the box; also a speech was made that day, right at the poll, to the effect that if the Republicans did not vote with them so that they could get rid of the damn rascals, that they had the land and the money and they would neither rent them land nor hire them.

Joseph Douglas sworn (page 366):

Q. At which poll were you at during the election?—A. At poll No. 1. In the morning, at gray daylight, it was raining pretty rapid; I got up and dressed myself; went to see about tickets; got tickets; came on back. I met about 150 Democrats there. waited for a considerable time until most of them voted; spoke to Col. J. A. Law, the Democratic chairman, and told him that I had some friends to vote, and he said, "You n't come in, Douglas." I replied, "Colonel, your men have voted, let them get t of the way." He replied, "That is my business." I said, "Colonel, you treat with contempt this morning; the men done voted are to get out of the way." I told him men to keep their places. I then saw him take a colored man, Peter Mc-ever, by the hand, lead him up to the poll, put a ticket into his hand, and voted the Democratic ticket. He then took another one, Joe Dicks, by the hand and do the same ing. Stepped out again; got Jack King by the hand and gave him the same ticket vote; and then I said, "Colonel, I don't like this; you give us no showing." To rich he replied, "I don't calculate to give you a showing." I asked him why. His ily was, "We don't intend to live under radical rule any more." I said, "Colonel, beat you anyhow." He replied, "If you do you are sorry for it. If you do beat us the ballots we beat you by the bullets. I know where you got your guns stacked." aid, "We don't vote with guns; we vote with ballots." The men I alluded to were colored men Colonel Law took by the hand.

Then some one called Mr. Whittemore, who was a United States deputy marshal. Whittemore said to him, "Colonel Law, after your men voted you are to give y to others." He said to Mr. Whittemore, "This is none of your damned business"; tMr. Whittemore said, "You must give way. I am deputy marshal, and I must see ght and justice go on." Mr. Law then said, "I regard you no more than any other izen." Mr. Whittemore then said, "I don't want you to regard me any more than y other citizen, but I want the right to be done," he replied. Colonel Law said, four men have their arms stacked, and I know all about it." Mr. Whittemore said, What arms have they?" He said, "They have guns concealed in jail." Mr. Whitmore called me and asked me about it. I told him a few were there, and I had them ked up, and would not let any one have them until the election was over, but that ey were not a circumstance to the guns the Democrats had in the drug store, where y had 150 or more. Then Colonel Law gave orders to his men to give way, which y did. Colonel Edwards then took old man Gaston by the hand and made him o the Democratic ticket, which he did, crying. After that Colonel Law said to Mr. lttimore in my presence that he would not disturb the election any more. The liers camped on the hill by Swift Creek, and the Democrats reported to them that had guns at the jail, and they put a guard there about the time the polls closed, kept them there until 10 o'clock next day. We had no other disturbances at t poll.

A. Smith sworn (testifying of the Timmons ville meeting):

Please tell us what occurred at that meeting.—A. Seeing the Democrats bearing school-boys from twelve to fifteen years old, seeing those men in arms, I, as the ty chairman, felt that it would not be safe for a joint discussion. I consulted b the Democratic county chairman and the other leading Republicans. The county irman, on the part of the Democrats, promised that he would guarantee that there id not be any collision, but the leading Republicans, with me as chairman, with threatening outlook, were not willing to risk it, and withdrew the Republicans a of a mile from the stand that was built jointly, and commenced speaking. We re not interrupted, only by a Democratic committee of five, to insist on a joint dis sion. We refused a second time, seeing that the violence was still existing, and went on. Towards the end of the speaking, the second committee of five came to us if they could come to listen to the speeches, and were allowed to do so. They ne, between three and four hundred, mounted and footmen, and armed with sixteen-oter double-barrel guns. One Bill Oliver had a wallet of pistols. They came up dsurrounded the wagon on which we were speaking. The Republicans then ad med and left.

The William Oliver that you speak of, don't you know that he has for the last r years resisted and defied the process of the law in this county?—A. He has.

On the occasion of this meeting at Timmons ville, did you not consider a col on or bloodshed as imminent?—A. It was imminent. Colored people were fright ed, and so much so during the first speech that the colored people commenced to run soon as they learned that the Democrats were coming down. There was some noise. hink a horse broke loose, and they commenced to run. I begged them to be easy.

Dr. John Lunney sworn (pages 374, 377):

Question. Did you attend the second meeting at Timmons ville?—Answer. I did.

Q. Do you remember, as you were going to Timmons ville that day, seeing the rifle-

club coming from that point?—A. I do. We met them on the road, and they cut and abused us as we passed.

Q. How were they dressed and armed?—A. Some had red shirts, others pieces of flannel on their hats; some had red flannel on their boots, and had pistols strung around them on the outside.

Q. Do you remember the coming out of Timmonsville that night by the Republicans?—A. I do. We had to halt a long time in order to avoid a collision with rifle-clubs that were returning to Timmonsville.

Q. You are an intelligent man, and I will ask you if the Republicans of this county from the demonstrations and conduct of the Democrats, were not in constant apprehension of collision and bloodshed during the campaign?—A. We were; and it only prevented by the greatest forbearance on the part of the Republicans, as was averted.

Q. Contestant's attorney has introduced in the cross-examination (in evidence, exhibit A, page 71) a pledge universally adopted in this county by the land-owners. What effect did pledges of this sort and the violent demonstration of the Democrats have upon the colored voters?—A. It compelled a great many to vote the Democratic ticket who otherwise would not have done so.

Q. What effect did the introduction of troops have upon the colored voters of the county?—A. It had no effect, except to give them assurances of protection to vote they pleased. The majority did not know that the troops were here, and they were not seen at or near the polls during the election.

C. R. Howe sworn (page 401):

Q. Do you know of any acts of violence or demonstrations of violence on the part of the Democrats during the campaign?—A. I do. I heard of the demonstrations made at the first Timmonsville meeting by the Democrats; was at the second meeting at Timmonsville, and saw violent demonstrations. Saw the Democrats at Darlington County with arms, dressed in red shirts; this was common during the campaign. I know more of Marion County than of Darlington County; they had rifle-clubs all over the county. The sheriff of the county was a captain of a saber-club. The club in town of Marion practiced in the Masonic Hall, drilling every Tuesday night, up to the election. On Hampton's day they turned out with red shirts and pistols buck around them, which was after the proclamations. During the campaign a colored man was killed at Simon Crawford's, and he had to leave the county, and is in Columbia now. In Marion County the colored people were greatly alarmed on account of the demonstrations made by the Democrats, and many colored people staid away from the polls on that account and for fear of losing their places.

D. D. McCall sworn (pages 403, 404, 405):

Q. What effect had the presence of troops upon the voters of the county?—A. I know whatever, in my opinion, towards changing the vote of a single white or colored voter. There was one company of about fifty-six men in the county, and stationed on the election at Bennettsville, Brownsville, and Red Bluff polls; and I have heard present Democrats as well as Republicans say they did not affect the voting in any way. On the day the troops came into the county the Republicans were holding at Bennettsville the only county mass meeting held by them after the opening of the campaign. A large number of mounted Democrats appeared in town on horseback, it was to divide time, and had one or more Democratic speakers from abroad. When Democrats found the troops were coming they marched in procession on horseback four or five hundred strong, waving flags and hats, out about a mile, to meet the troops and marched with them into town, cheering, &c., and in no way attempted to disturb or interrupt the Republican meeting, although they had, before it was generally known that troops would be on hand, assembled in large numbers from all parts of the county, coming into the town in companies, with flags, officers, &c.

Q. How was the campaign conducted?—A. With unusual excitement and bitterness and with demonstrations entirely new in Marlborough County. I refer to mounted processions of Democrats. On the 8th of September I saw a large number of Democrats from Marlborough and Marion County pass my spring place on horseback in buggies, armed mostly with guns, going to meet Mr. Whittemore, a Republican of Darlington County, who it was reported had come over into Marlborough; this report proved unfounded. On Hampton's day, in Bennettsville, a large mounted procession composed, say, of one thousand, rode, cheering and hallooing, at a gallop through town, and on the day of the Republican mass-meeting, referred to before, the Democrats were out in procession, on horseback, in strong force, and the excitement was tense. Any little difficulty on this day between a white and colored man might have led to the sacrifice of a great many lives.

I heard one of the delegates to the Democratic State convention which nominated Hampton say, after he came home, that "they, the Democrats, were determined

have heaven or hell, one." I heard Colonel Yeoromans, one of the Democratic speakers on Hampton's day, say, in the presence of Hampton, in his speech, that they intended to carry the election; and, if they did not, that there were in the State twice ten thousand men who were prepared to know the reason why. Col. J. S. Richardson, in his speech on this occasion, in speaking more particularly to the colored people present, stated that under Republican rule in this State no white man had ever been convicted of murder for killing one of their color, and asked them for this reason to support the Democrats, saying they could and would protect them from such things.

In speaking of rifle-clubs, I would like to state one matter within my knowledge. At the May or January term of court in Marlborough, 1876, a white man by the name of Ross was convicted in court of general sessions for a misdemeanor, but run away before sentence; the judge sealed the sentence and a bench-warrant was issued for defendant and placed in the hands of the sheriff. During the campaign Ross made his appearance in the county and rode in the Hampton procession in Bennettsville, and the sheriff received a note from the county Democratic chairman, advising him not to attempt the arrest on that day, owing to excitement, &c. Shortly afterward, say a week or more, one Powers came to me, solicitor of the circuit, saying that Ross belonged to the same club with him, and that they were determined to protect him and keep him from being arrested or going to jail on the sentence of the court, and he has never been arrested yet. I brought this to the attention of Judge Townsend, the presiding judge of the circuit.

Larry Aiken, sworn (testifying as to Darlington, page 331):

Q. Was the campaign, on the part of the Democrats in this county, conducted peacefully, or with a great show of violence?—A. They expected to carry the election by violence, and did appear that they intended to carry the election by storm. The very day a colored man was shot, on the day General Hampton spoke, and I, as town marshal, arrested the man and put him in the guard-house and just after that up came the whole Hampton cavalry and run another colored man in the gate with pistols pointed at him, and the man was taken out of the guard-house and released, his fine being paid. At Timmons ville I attended both Republican meetings. At the first one I saw about 500 armed Democrats with rifles and bayonets, and we moved from the first place we occupied on account of threats. A joint platform was built by Democrats and Republicans, and on the day the Republicans held their meeting they withdrew from the platform on account of threats. We went away a half a mile and held our meeting. Mr. Whittemore was speaking. Two Democrats cocked their guns to shoot him, and they did not shoot him, because my men were there and cocked their guns at them.

Q. After they had returned to Timmons ville, and found the Republicans there, did they not make threats and demonstrations of violence there?—A. They did.

Q. On Hampton's day, in the town of Darlington, about how many armed white mounted men were in the procession?—A. About four hundred armed men on horseback.

Q. Do you know anything as to whether the rifle-club you mentioned of being in the town had rifles or not?—A. I know there were rifles here, brought in boxes from the depot by the Democrats and stored in different houses.

Q. Did you hear any threats during the campaign from land-owners as to non-employment, &c., to colored people for voting the Republican ticket?—A. I did; a heap of them. I, for myself, was turned out for voting the Republican ticket.

Q. Did these threats of turning off those who voted the Republican ticket, and the violence exhibited during the campaign by the rifle-club, cause many Republicans to vote with the Democrats against their wishes?

(Objected to as leading, and as calling for expression of opinion.)

A. It did, and kept many others from voting; some of them I know by name.

Cross-examination:

Q. Do you know of any other Democratic rifle-club except Captain Floyd's?—A. I do; all over the county.

Q. How do you know?—A. As a deputy sheriff, I saw them drilling in different sections of the county.

Q. Please state where.—A. At Ebenezer, at Palmetto, and near Black Creek church.

Q. Who did you see at Ebenezer?—A. I don't know.

Q. Who at Palmetto?—A. Don't know any.

Q. Who at Black Creek?—A. Don't know any.

Q. How do you know they are Democrats?—A. Because they were white.

Q. How were they armed?—A. With guns.

Q. Can you say that the colored man shot by the white man on Hampton's day at Darlington was fired upon on account of his politics?—A. I cannot.

Q. Was the man who was arrested for the shooting drunk?—A. No.

Q. Was the authority of the marshal interfered with?—A. It was. This man taken from him by the Hampton cavalry and carried to the speaking.

Q. You have stated in your direct examination that this man's fine was paid and was released. You now say that he was forcibly taken from the custody of the marshal. Explain the matter.—A. As soon as the Hampton cavalry found out this man was arrested they came and took him away, and Colonel Law had him put back in the possession of the town-council.

Q. You have said that 500 armed men, Democrats, were at Timmons ville. I saw many armed Republicans were at Timmons ville?—A. About two or three hundred.

Q. On the day of election did you see any of the rifle-clubs, at or near the place marching through the town?

(Objected to, not being in reply.)

A. I saw 50 or 60 marching through the town on the day of election, dressed in red shirts, with a red flannel around their hats, about four or five o'clock in the evening.

Q. On the day before the election, or for two or three days previously, did you see any red-shirted procession marching about?

(Objected to, as not being in reply.)

A. I did not see any myself, but heard of them.

LARRY AIKE.

Alfred Smith sworn (page 335):

Question. Can you mention some demonstrations and incidents that would indicate a show of violence?—Answer. At Timmons ville, at the first meeting of the campaign there were about four or five hundred Democrats met at Timmons ville for a joint discussion, having heard that the Republicans intended to have a meeting there that day. At first the Republicans of Darlington went to Timmons ville and found that a stand was erected between the Democrats and Republicans. After waiting there for a while the Republicans concluded, by seeing so many armed men come into Timmons ville there would be certainly a row should the Republicans attempt to have a joint discussion. On that account the Republicans withdrew a half of a mile and held their meeting. About 12 o'clock the meeting was called to order, Jourdan Lang, chairman. A number of speakers had spoken, the Democrats sent a committee of five to ask for a division of the time, which offer was brought before the people and voted down. The committee then returned to the Democratic stand and another one was sent to ask whether the Democrats might come and listen to the speeches. This request was granted. The committee returned, and in about one-quarter of an hour about four or five hundred Democrats, armed with rifles, shot-guns, and pistols, mounted and partly on horseback, marched up to where we had our meeting. One man had twelve pistols. After the Democrats got near our stand they formed a semicircle. A good many commenced asking questions, interrupting the speaker. At that time B. F. Whittemore got up to the stand, and he was insulted. Good many asked him, "Hog, where is that forty-hundred dollars that you grabbed from this county?" Whittemore did not reply. I saw Mr. Hennegan point a rifle at him, and Pawley told him not to shoot him. Hennegan replied that we did not come down to shoot. I stepped off a little piece, stood near the man who had the twelve pistols, who said, "I've lost the best chance I ever had to kill the damned hog Whittemore." About that time the chairman announced the meeting adjourned, and said that any one who wished to stay to hear Richardson could do so. I was about the last to leave for Darlington. A few of the Republicans staid at the stand, but the greater portion of the Republicans left, owing to the fear of being shot down.

Q. The Democrats that were armed with shot-guns, &c., how were they dressed?
A. They had not any uniforms that time.

This meeting was September 23, 1876.

Q. Did you see any riding by men in uniform during the campaign?—A. I seen about 2,100 mounted men, in red shirts, with pistols around them, in the town of Darlington on Hampton's day, the pistols being buckled on the outside. I don't mean to say all were uniformed red, but had some kind of a uniform. I was at the stand when General Hampton spoke. While Mr. Richardson, of Sumter, was speaking, a man came to the stand that the colored people and the rifle-clubs were fighting down to. I saw at that time the rifle-clubs formed a circle around the stand, got on their horses and many of them got guns from buggies; came to town, saying that we are not for anything; among the men coming from the stand were Preacher Hart. When they came down the marshal had Sidney Kelly, a white Democrat, put in the guard-house for shooting Furman Brown. When they came, a company of cavalry from Darlington, rode up in front of the guard-house, cocked their guns, and demanded the prisoner. The prisoner jumped on a horse behind one of the men and went to the Hampton stand. On the day of election I was at Lydia, and nearly every white man

to vote was dressed in a red shirt, red band on his hat, and a great many with pistols buckled on the outside; and a man with name of Stephan Woodruff drew and cocked his pistol on me; he was forcing two or three colored men up to the polls to vote, and I remarked to leave the men untrammelled, they could vote as they pleased and get their tickets from whom they pleased. He cursed me, saying he would blow out my brains—"these men are living on my plantation." I was one of the supervisors at that poll. Simeon Perry, another Democrat, brought four colored men to the polls, and marked their tickets in order to find out from the Democratic managers whether these men voted the Democratic ticket. A colored man came up to vote at the poll, and asked for a Republican ticket, and Sydney Kelly told him, "Here is a Democratic ticket"; he refused to take it, and a Republican came up with Republican tickets in his hands and offered one to this voter, which he took and voted. After leaving the box, the same man who offered him the Democratic ticket asked him who he voted for, and he said, "Of course I voted for Chamberlain and Hayes," and Sydney Kelly struck him in the mouth. When the counting of the votes began, O. D. Lee exhibited his list he had of colored voters in order to find out how they voted by comparing his list with the marked tickets given colored people to vote by Democrats. Simeon Perry said "Four damn niggers deceived me, for they did not vote the tickets I marked for them." He then said, "They have lost their best friend by telling me a lie."

Q. On the 4th day of November did you see the Timmons ville rifle-club come into Darlington?—A. I did see them come in, cheering, yelling; one man had a gun strapped across his back; saw another one in a wagon; all members were dressed in red shirts; nearly all had pistols strapped around their waists on the outside, and the one in front had the gun strapped across his shoulder. I was standing in the post-office door looking on, and one of them cursed me for a damned Republican son of a bitch. I had not said one word. I saw a wagon in the rear of the procession covered with fodder, said to contain guns; this was the same wagon had the gun exposed with a bayonet fixed; and the same wagon followed the procession on their homeward march, with the fodder over it.

Alfred Smith, sworn, continued testifying of a meeting held November 4, 1876:

Q. Can you specify any other instances of show of violence except the ones you have already stated?—A. At the second meeting in Timmons ville we met rifle-clubs and men on horseback with rifles strapped around their backs coming to Darlington; when we got on the other side, six or seven miles from Darlington, we met those men. They cursed Whittemore and Sam Keith. Mr. Morris, the leader, came up and apologized by saying that he did not wish for his men to insult anybody. On arriving in Timmons ville we found a stand erected. An hour afterward the speaking began, and we did not have any trouble during the meeting at all; had a torchlight procession and started for home; and just coming out of Timmons ville met the same men, who stopped in the road to prevent us from coming out, and drew their guns and pistols and had on red shirts. I heard a good many of them say they intended to have Hampton and reform, and not a negro should rent a piece of their land. We had, in order to avoid a collision, to take the ditch. Captain Whipper, in charge of the torchlight procession, then requested that they either give away or move, and they would not do either. We went across the ditch over in the woods, and then the red-shirt men went on home without any trouble.

Q. You know that a large Democratic meeting was held at Darlington that day, and that distinguished speakers were to address the meeting?—A. I do not know, and did not hear; we met them going to Darlington, and on our way returning.

Q. How many men did you meet that morning and in the evening wearing red shirts?—A. About 200 or 300.

Q. Can you specify any other show of violence except the ones mentioned?—A. I can't name any others just now.

Q. You say there were about 400 or 500 Democrats there that day; how many Republicans were there on that day?—A. About 200 or 300 were present.

Q. How many guns did you see in the party you met returning from Timmons ville to Darlington the second time, at Timmons ville?—A. About 35 of the party had improved guns and repeaters.

Q. How many mounted men went up to the Republican stand in the evening?—A. About 400 or 500, of which 200 were on horseback.

Q. Did not these men simply ride up, and ride up to the opposite side of the stand from the militia you spoke of?—A. They formed a half circle to the side of the militia, the head of the horses to the stand.

Q. Did you hear any of these men make any interruption except a request to be heard?—A. They did.

Q. What was it?—A. I heard a Democrat ask what I stated already in my examination-in-chief.

Q. Who made use of that remark to Whittemore?—A. I don't know.

Q You say Mr. Oliver had twelve pistols; how did you count them?—A. The handles were sticking out of the mouth of the bag.

S. J. Keith sworn (page 345):

Q. On the 4th day of November did not the Republicans have another mass meeting at Timmons ville?—A. We did; it was the last meeting we had; the Democrats also had one at the court-house. While going to Timmons ville we met three clubs on horseback, with red and blue shirts, pistols on the outside of their shirts, and rifles across their backs; before we got to Timmons ville we met another club. I had a wagon, and some of the speakers were with me, Whittemore; and as they were passing us, one man with the name of Atkinson hallooed out three cheers for Whittemore, the damned old son of a bitch; they cursed every Republican, and would get into a fuss right there, if we had not been quiet. They yelled and fussed a great deal. We went on to Timmons ville; had a very quiet party, because the Democrats were not there, and the presence of the soldiers had a great deal to do in keeping the peace. We remained to have a torchlight procession, and as we were coming near Ragsdale's store, a lot of white men came to my wagon, where Mr. Whittemore was, and cursed him shamefully, and by the time we got into the road leading to Darlington we heard the Democratic band returning from Darlington. We halted, the road being very narrow, that they might go on and pass, for fear of a collision and to avoid trouble; they insisted upon turning the street we were on, and make us give way, and when we would not give way they went on; they turned out of the direct way; after they passed we came home. We had no other trouble except at the places stated.

Jourdan Lang (colored) sworn (page 326):

(The meeting was held first part of September.)

Question. State what occurred at Timmons ville.—Answer. I was at the meeting at Timmons ville. A platform was erected by Republicans and Democrats. After the Republicans from Darlington got there they split, because it was reported that there would be a fuss, a fight on that day, or confusion, in case that the Republicans refused to have a joint discussion. The Republicans withdrew from the stand, gave it up to the Democrats, and removed to about a half of a mile from there. After we had removed, a committee came from the Democrats requesting a joint discussion, which was refused. A committee of five Democrats were then sent to listen at the discussion of the Republicans. I was chairman of the Republican meeting after they withdrew from their former place of meeting. After that they sent a committee to ask if they all could come to attend our meeting; this was also granted. As chairman of the meeting I know that this request was granted. They came down mounted; about four or five hundred, mounted and well armed. Our meeting adjourned about half of an hour after they got there. Mr. Richardson came with them. I was requested to induce Mr. Richardson to speak, but declined, not having any time, having long ways to go; but a considerable crowd remained, but not long enough for Mr. Richardson to speak, who did not speak.

It is most respectfully submitted the evidence establishes General Hampton's supporters had determined from the day of his nomination to elect him—by force and extreme violence, if need be.

The colored people had been lately enfranchised, and were most jealous lest they might lose their liberty, and were watchful of every act on the part of their late masters.

It is asserted in the majority report the policy of the Hampton canvass was conciliatory, and resolutions of conventions and public speeches are referred to as proof of the fact.

We have examined the record with the greatest care for any explanation from any stand-point of the armed marauding we have described consistent with a conciliatory policy we feel justified in characterizing as an intimidation policy, coupled with the violence the evidence describes.

The Democratic committee called upon the supporters of General Hampton to adopt the following pledges:

SUMTER, S. C., October 25, 1876.

The Democratic executive committee recommend the adoption of the following pledge:

J. D. BLANDING,
Chairman Democratic Executive Committee—

A. W. SUDER, Secretary.

THE STATE OF SOUTH CAROLINA:

We, the undersigned, citizens of Sumter County, hereby pledge ourselves (each for himself) that we will not assist or extend any favor to any person of either race or color who shall vote for the Republican State or county ticket at the election on 7th November next; and that we will, in all business transactions, give the preference to such persons as shall vote the Democratic State and county ticket at said election.

EXHIBIT A.

ARLINGTON COUNTY, ——— Township:

We hereby pledge ourselves to each other that we will not rent or let lands or houses, nor advance supplies on credit, to any person who shall vote the Radical ticket at the election to be held on the 7th of November next; nor will we employ as a mechanic any person who shall so vote at said election, or keep in his employment one who do so vote; nor will we employ in any capacity such persons as may be designated by the executive committee of the Democratic party for this county, in a suit to be furnished by said committee. This pledge to be of force until January 1, 1878.

And of which General Hampton said, mildly, "*that policy has not my approbation.*" (P. 249 of Record.) He says he knew of "*that policy.*" He does not say he condemned it; and you fail to find an utterance of his advising otherwise; and in speaking of the "*Rifle Clubs,*" at p. 18, he says: "*As soon as the proclamation was issued I advised all the clubs to disband.*" The majority report abounds with quotations from the evidence of General Hampton and others, all in sympathy with him, judges and sheriffs, that "*all was quiet in South Carolina;*" "*there were no disturbances.*" South Carolina was doubtless quiet; she endured, or enjoyed, as you please, the quiet of a conquered people, subjected to military rule. She had the peace and order the strong arm of a military despot may maintain.

The colored electors were in the majority, and General Hampton must have their votes divided. Prizing their lately acquired freedom, they naturally regarded this "*conciliatory policy*" as threatening it. Their white masters, in a time of peace, with arms in their hands, were *demanding* their votes for Hampton. They did not say to them, "*Except you do this thing we will kill you;*" that was left for inference. They did say to them, "*Except you do this thing we will starve you; we will not give you shelter for your heads; we will neither employ you nor rent you land.*"

Any race of men, except one subjected to involuntary servitude for years, would have been frantic with despair, but these mute "*hewers of wood and drawers of water*" prepared to again endure the yoke, or at least make terms with the apparent masters. The armed men could tend nothing but their subjugation; the pledges not to hire them, or not to rent them land, threatened them with starvation, yet they were not unanimous for Hampton." In their churches and by their firesides, out of sight of the "*armed bands,*" they grew strong in thought; and it could seem there must have been in this Congressional district twenty or twenty-five black men, either so ignorant as not to view the situation as dangerous to their race, or so debased as to be indifferent if they died, or to have been able to read the future with a prophetic eye, and to recognize amid all this disturbance Hampton as their prophet—and of these men their fellows were intolerant; and the eight hundred pages of evidence disclose that, in a voting population of upwards of 30,000, in 7,500 square miles of territory, twenty colored men had personal interdictions, and were threatened with social ostracism if they voted the Democratic ticket; nevertheless, *were not intimidated thereby.* One cow-pen was burned; one man had a quarrel with his wife, struck her,

and was abandoned by her; she had left him twice before; and one man was struck in the face by a woman, armed with an umbrella. (See Record, p. 87.)

Areas of the counties embraced in the first district.

	Square m
Chesterfield.....	
Darlington.....	
Georgetown.....	
Horry.....	1,
Marion.....	1,
Marlborough.....	
Sumter.....	
Williamsburg.....	1,
Total.....	7,

There is nothing in the record to show either social ostracism or force was preventing the colored voters from supporting Hampton. On the contrary, the "policy" we have described, according to the evidence of General Hampton, according to all the witnesses called by the contestant, according to the majority report, was "conciliating" them as they were promising to support the Democratic candidates until Governor Chamberlain's proclamation appeared.

It is true there were some members of the State militia still in possession of State arms, but there is nothing in the case evidencing improper use of them.

We submit there is nothing in this case to justify the expulsion of Mr. Rainey upon the score of intimidation or social ostracism.

We subjoin a table of the voting population of the first Congressional district, taken from the census of 1875, showing—

White voters.....	14,
Colored voters.....	20,
Aggregate.....	34,
Majority colored voters.....	6,
Rainey's (Republican) vote was.....	18,
Richardson's (Democrat) vote was.....	16,
Aggregate.....	34,

The vote verifies the census. Rainey's majority was 1,528, showing Richardson must have received 4,798, nearly one-fifth of the colored voters, demonstrating it was not operated upon, either by fear of violence or social ostracism among themselves, to vote for Mr. Rainey.

Voters over 21 years of age.

Counties.	White.	Black.
Chesterfield.....	1,543	1
Darlington.....	2,302	3
Georgetown.....	643	3
Horry.....	1,696	
Marion.....	3,081	2
Marlborough.....	1,583	1
Sumter.....	1,827	1
Williamsburg.....	1,412	1
Total.....	14,147	22

As to the second point, intimidation by the Federal troops :

It is not claimed that the troops coerced, intimidated, or persuaded ; that an officer or soldier did or said aught indicating a personal preference for one side or the other.

They were stationed, usually, so far as the evidence discloses, out of sight, and in no case immediately at the polls ; 250 or 400 yards are given as their nearest approach to the polls.

An officer and twenty-nine men were divided between Sumter Court-House and Lynchburgh, places 10 miles apart, in Sumter County.

Charles H. Morse (evidence at page 90 of the record) :

Q. 14. Where were the United States troops stationed in this county ; nearest to what polls, and how near to the polls ? Were any of the United States troops at or near the polls on the day of the election ?—**A.** A small detachment of United States troops, under Major Kelley, arrived in this town a few days before the election, and went away a few days after the election. They were encamped east of the railroad depot, about half a mile from the polls. They did not appear at or near the polls on the day of the election.

Wilder (pages 31, 32) :

Q. How many soldiers were there in the county of Sumter ?—**A.** About fifteen privates and two officers, at Sumter Court-House. At Lynchburgh there were one lieutenant and about ten men, brought from Timmons ville ; and I heard Mr. Wells say he brought them there ; in all about twenty-nine men.

An officer and fifty-six men were in Darlington County.

(See evidence as to Timmons ville.)

Culpeper (157, 158) :

Q. When were United States troops sent into the county ?—**A.** They arrived here on Friday night, November 3, and left about one week after the election ; 56 men in all came here ; 25 or 30 remained during the election, several squads having been sent off to Darlington, Florence, and Lynchburgh.

Timmons ville, Darlington, and Florence are in Darlington County, and the twenty-five or thirty men were divided between those points, or ten miles apart.

So far as the record shows, the foregoing discloses the troops in the first Congressional district, comprising the counties of Chesterfield, Marlborough, Darlington, Sumter, Marion, Horry, Williamsburgh, and Georgetown.

The Constitution, section 4, article 1, provides, in reference to the election of Representatives to Congress—

But Congress may at any time by law make or alter such regulations.

The attention of the House has in so marked a manner and so recently, in the Dean-Field case, been called to the legislation upon the subject of Congressional elections as to render quotations from the laws upon that subject hardly necessary ; but see General Statutes :

SEC. 5506. Every person who, by any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting, at any election, in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less than five hundred dollars, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment.

SEC. 5507. Every person who prevents, hinders, controls, or intimidates another from exercising or in exercising the rights of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section.

The last clause of section 8 of article 1 of the Constitution gives Con-

gress the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all powers vested by this Constitution in the Government of the United States, or any department or officer thereof."

The last clause of section 3 of article 2, speaking of the President, says:

He shall take care that the laws be faithfully executed.

Section 4 of article 4 is:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or of the executive thereof (when the legislature cannot be convened) against domestic violence.

In pursuance of the foregoing provisions of the Constitution, in pursuance of the highest law, both to an individual and a government, of self-preservation, Congress has enacted section 5297.

SEC. 5297. In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive when the legislature cannot be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection, or, on like application, to employ for the same purposes such part of the land or naval forces of the United States as he deems necessary.

SEC. 5298. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States, within any State or Territory, it shall be lawful for the President to call forth the militia of any or all of the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

SEC. 5299. Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail to protect, or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land or naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combination.

SEC. 5300. Whenever, in the judgment of the President, it becomes necessary to command the military forces under this title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes within a limited time.

No question is made but the proper proclamation was made by Governor Chamberlain, the proper call upon the President, and the proper proclamation issued by the Federal Government.

It has not been claimed the legislature of the State of South Carolina might have been convened to take appropriate action in reference to the disorders we have referred to. It has not been claimed disorders did not exist. On the contrary, the majority report asserts so great was the terrorism exercised by the majority of the colored people as to prevent the exercise of the elective franchise by the minority. Arms are alleged in their hands for improper uses. That we expressly deny. We have mildly depicted from our stand-point the utter perversion of a free popular government by the Hampton party, a condition of terrorism

nce without parallel in any land under a constitutional govern-

the premises of either report, grant the existence of evidence tending to show the same, the governor of South Carolina was not act judicially in appealing to the United States Government

majority report fails to suggest he acted corruptly. Called upon, the President of the United States had but one duty to perform—assign the troops at his disposal to the police duty of preserving order. The President was not to be influenced in the exercise of his personal duty by that police force, and he was to be protected in that exercise. He did not insist the President acted ministerially. He acted judicially in the exercise of a wise discretion, in the light of the evidence presented to him.

As we have already stated, it is not alleged the soldiers did anything to influence the election, that is, committed any overt act. Located as they were, it appears they were silent and passive spectators of the election without expressing preference in the result of the election. And it is not alleged these men coerced the colored voters to a support of the Republican ticket.

But their presence emboldened the theretofore despairing black freedmen to exercise a freedman's right and vote his choice.

The majority report advises us there was no violence before the troops were sent. We grant there was none, because terrorism had stamped out all violence, threatened starvation had crushed the souls of these men, and the Federal soldiers appeared upon the scene, and it was under the rifle-clubs and saber-clubs, while they would valiantly fight the negroes, did not want a conflict with Federal authorities, we see these freedmen to a great extent took courage to enjoy their civil privilege and right.

The proposition of the majority is, a police force detailed by the Federal authorities, that simply enables the citizen to enjoy his rights, and does not render that enjoyment illegal and void.

The proposition of the majority is, that a community terrorized into a state of involuntary action, or subjugated to the extent of being brought through fear of violence, to take their lawful part in an election, in the presence of troops they are relieved of their apprehension, and exercise their rights as electors, such exercise is illegal and void.

The novel proposition is introduced into this case. Governor Pickens swears, with others, that they were told (the colored men say) the troops were placed there to make them vote the Republican ticket, and on this, solely, is based the idea of coercion. It does not appear the colored voters believed it.

It does not appear any responsible person told them so. It does not appear as a fact, any considerable number were told thus. It was a rumor that reached the ears of the witnesses. The fact doubtless is they believe the troops were sent there to enable them to vote the Republican ticket if they desired to. But one fact stands out clear in the case, and that is, the colored population was not operated upon by fear of the soldiers. It is manifest the only effect of the troops upon the freedmen was to give them confidence to vote the ticket of their choice.

The report discusses the English law in regard to the presence of troops and fails to discover the dissimilarity of the governments, in the case of the United States, justifies the legislation authorizing the use of a police force even at an election; in the case of England, calls for legislation prohibiting such use.

Here the government is of the people, and a free and fair election is an absolute necessity to give a lawful government; in England the executive branch of the government is, or was at the time of the enactment of the law cited, a privileged class, and to the end the people might not be encroached upon by the Crown, we find the rule and the legislation referred to prohibiting the presence of troops.

In the judgment of the undersigned, the action of the Federal Government was justified, and incumbent upon it, in stationing the troops as it did in South Carolina; that nothing in the conduct of the troops, neither did the fact of their being stationed there, influence the electors to vote otherwise than as their judgments and consciences dictated; but to the contrary, the action of the Federal Government and the presence of the troops enabled the freedmen to participate in the election and vote for the candidates they preferred; and at this time, removed from the election, we trust a great political party will not deem it proper to expel from the House a Representative reflecting honor upon his race and creditably representing his constituency for that action on the part of the General Government the impartial observer cannot but justify.

Inferentially, at least, the report of the majority denies the right of the General Government, upon the call of the State, as provided by Federal laws, under any conceivable state of facts, through the aid of the Army as a police force, to protect the elector in his right of franchise at a Congressional or electoral election. With that view we have no sympathy. We directly affirm the contrary right. The question has been involved directly in the successful efforts of the nation to maintain our nationality from dismemberment, and all the States are now represented here because of the firm establishment of the principle by the highest power to which the contending parties could appeal. The denial of the "authority" here will neither weaken nor disturb the "judgment" which has been "given" by the people; and we doubt not, in the future, the Government will protect the citizen in the full enjoyment of his right of suffrage, by whichever party it may be administered. And we submit it is most unprofitable to enter a useless and feeble protest, which only avails to serve a temporary purpose.

The undersigned recommends the passage of the following resolution:

Resolved, Joseph H. Rainey was duly elected and is entitled to a seat in the House as the Representative in Congress from the first Congressional district in the State of South Carolina.

FRANK HISCOCK.

R. GRAHAM FROST vs. LYNE S. METCALFE.

THIRD CONGRESSIONAL DISTRICT OF MISSOURI.

Charges of illegal voting, and that votes were cast for contestant and not counted, misconduct of the officers of election, and that numerous persons were appointed United States marshals solely as a bribe for their vote for contestee.

Held, That it is presumed that the officers of election did their duty, and it would be dangerous to permit the solemn act of sworn officers of the law to be set aside by the testimony in this case; and it would be still more dangerous after it was known that ten or twenty votes would change the result of an election to permit the officers to recall their proceedings and make a change which would reverse the result of the election.

Contestant is entitled to the benefit of votes offered for him, but which were rejected by reason of the voter's name not being on the poll-books, but which was on the registration list.

Congress can go behind all returns, but to authorize the House to count a vote four things are requisite: First, the person offering to vote must have been a legal voter; second, he must have offered to vote; third, it must have been rejected; and, fourth, it must be shown for whom he intended to vote.

As to the use of 728 deputy marshals, the committee cannot make any estimate from conjecture how many voters they changed by their conduct; nor would it be safe or warranted that the parties alleged to have been bribed would have voted the other way.

The House adopted the report February 25, 1879.

FEBRUARY 25, 1879.—Mr. JOHN T. HARRIS, from the Committee of Elections, submitted the following

REPORT:

Your committee having had under consideration the foregoing case beg leave to submit that by the legal authority of the State of Missouri the vote between these parties stands thus:

Metcalfe	8,099
Frost	8,080

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giving to the sitting member a majority of 19 votes, to overcome which the contestant claims there should be deducted from contestee the following votes:

First. Proof of six illegal votes cast for Metcalfe by negroes who were not residents of the State of Missouri.

Second. By proof of two illegal votes cast for Metcalfe by parties not qualified to vote at said election in said district.

Third. By proof of twelve votes of duly registered and qualified voters whose votes were legally offered for Mr. Frost, but were placed in an envelope and received but not counted.

Fourth. By proof of a mistake made by the judges and clerks of election precinct No. 63 in their returns, giving to said Metcalfe nine more votes than had actually been cast for him at said poll.

Fifth. By proof of twenty-five more votes being counted at precinct No 77 for said Metcalfe than had actually been thus cast for him.

Sixth. By proof that the conduct of judges and United States supervisors and marshals at said precinct No. 77, in handling and tampering with the ballots and the tallies, tainted the return from that poll with fraud, and rendered the result so uncertain that said poll must be wholly rejected.

Seventh. By proof of the fact that the United States marshals were appointed and stationed in said third Congressional district to the number of 723. That said marshals were wholly unnecessary and were appointed solely for the purpose and in number sufficient to make reasonably certain the election of Metcalfe.

Eighth. That the money promised them by the Government was used simply as a bribe for votes for Metcalfe. That many of them were Democrats, who, to obtain the position, were compelled to promise and pledge that they would vote for Lyne S. Metcalfe.

Your committee have carefully examined these reasons in the order in which they are stated by contestant.

First. They do not regard the proof as sufficient to show that the six votes in question were not legal voters. It wholly fails to show that the residence of these colored men was not at their place of voting. Neither does the evidence show that they voted for contestee. It would be a dangerous doctrine to the right of election to permit the solemn act of the sworn officers of the law to be set aside upon such testimony. It is to be presumed that they did their duty. A majority were of the same politics of the contestant, and the evidence shows they sought to be watchful and careful in the discharge of their duty. It may be, and often is, difficult to determine the home or domicile of a boatman, or one who is constantly engaged in steamboating or on railroads, but as the law contemplates every man has a domicile or residence, it is often only known to the party himself. It is a question of *intent*, known alone to the party. It is to be presumed the election officers sifted these voters and came to correct conclusions. The evidence is not sufficient to show they did not.

The next point in order relied on by the contestant is, that twelve legal votes were cast for Frost and not counted. In considering this question we shall not review what has been said in contestant's brief or in contestee's brief in regard to the manner in which the registration lists were reprinted. The evidence shows conclusively that there were mistakes made in the reprinting, and that names were indiscriminately left off of the printed list furnished the judges which were on the original registration lists. It is not denied that any man whose name was on the original registration-list was entitled to vote, notwithstanding the fact his name might have been left off of the reprinted lists. It has been amply shown in the testimony that these omissions were the result of the hurry and confusion of the reprinting. If contestant proved that any man's vote was rejected by reason of his name not being on the poll-books, whose name was on the *registration list*, and that his vote was offered for him and *not counted*, then he is entitled to benefit of it.

Your committee have examined the evidence with great care in regard to these twelve votes. It is too voluminous to copy in this report. It is sufficient, therefore, to give the result of their investigation, which is, that the evidence does show that A. R. Hynson and August Lansing were legal voters at precinct 63; that they voted for Frost, and that their votes were not counted. In the other cases, to wit, of Dem. Nash, Colonay, Amend, Welch, Dunn, Carroll, Godde, Kennel and Willow, the evidence fails to show that the votes were not counted or that they were properly registered, or that under the laws of Missouri they were entitled to vote. The testimony tends in that direction but is not of that character, clear and conclusive, which ought to

the sworn act of the officers of the law, whose duty it was on that, then and there, to make all those inquiries and form a correct judgment. The law presumes they did.

While on this branch of the subject your committee will dispose of complaint made by contestant that by reason of the errors in copy the registration list he lost many more votes than contestee. To it votes which were never offered at any poll is carrying the doctrine further than we ever knew it. To authorize this committee to ratify a vote, four things are requisite: first the person offering to vote must have been a legal voter at the place it offered to vote; second, he must have offered his vote; third, it must have been rejected; and fourth, it must be shown for whom he offered to vote. These requisites do not exist in these cases, therefore your committee will not further consider them.

Fourth. Contestant complains that there was an error against him of 10 votes by the figure 1 being placed in the wrong column on the memorandum kept by the clerk in the counting of the votes. This error, if error it was, was not discovered for five days after the election, but that fact would not operate here, as Congress can go back on all returns. The real question is, was it an error? There is no evidence except the paper itself. It is found five days after the election, a gentleman who kept the paper from which the result was announced, in the column second from the right, the figure 1 stands alone. From this it is inferred that it was intended for 1. All the witnesses testify that they have no recollection on the subject. They only take it to be an error because they find the unit figure in the ten column. As would not count in the last column, it is suggested to the witnesses that in the hurry of recording the count it might have been deemed by clerk unnecessary to add it. We are then left to other facts to determine whether this was an error or not. The papers and officers of election wholly fail to give any explanation except as stated. After the polls were closed and the result ascertained, the duly authorized officers set up the result, announce it, and make due certification and return thereof to the proper officer. It would be a dangerous precedent, after it were known that ten or twenty votes would change the result of an election, to permit the officers to recall their proceedings and make a change which would reverse the result of the election.

But whatever the result would be, if there were *manifest error*, it ought to be corrected by the officers or the House. The aggregate vote for President at that place was 375; for governor, 370; for Congress,

This corresponding vote for the highest political officers, your committee feel, tends strongly to show that there was no error in the count, and that the certification of the officers of election was correct.

Fifth. Contestant claims an error of 25 votes at precinct No. 77, in that 25 votes were counted *twice* for Metcalfe.

The only witness on this point is a Mr. Wortman, a deputy United States marshal, who says "twenty-five" was called out for Metcalfe but not recorded; that it was repeated, "twenty-five" for Metcalfe, and the clerk seemed to be writing; and Furgerson, who was also a deputy United States marshal, says "twenty-five" was called out twice for Metcalfe, and that when the attention of the clerk was called to it, the clerk told the witness to "Shut your mouth; there is a supervisor here to attend to that"; and Mr. Schwaner said he would attend to that. And they further prove that Dejong, the Democratic clerk, said "If these fellows will keep your mouths shut we will get along a heap better," and he added, "Too much confusion here."

When we remember that a majority of the judges of election and clerk were Democrats whose integrity has not been questioned, it would be past comprehension to suppose they made a mistake against their political friend of twenty-five votes by one dash of the pen when their attention was called to it at the time.

The failure of contestant to call these officers of election must be construed against him. Dejong, a Democrat, and the very clerk who kept the tally, in an affidavit on page 65 says when this second call of twenty-five was made he asked, "Is this the same twenty-five just called by the judge and in confirmation or not?" I was answered it was the same twenty-five, and in consequence it was not again entered on the tally-sheet by me nor counted a second time."

Contestant objects to this affidavit as not being regularly in the case. That may be, but it may serve to give the reason why contestant did not call affiant. The contestant having failed to call Dejong and the other officers of election, the law presumes they would testify to the correctness of their proceedings if they had been called, therefore he is not injured by the affidavit.

At this place Metcalfe ran about 25 votes ahead of his ticket, just 25 ahead of the Presidential electors, and 27 ahead of the Republican candidate for governor, while Mr. Frost ran just 20 behind the Democratic electors, and 25 behind the Democratic candidate for governor. The aggregate vote for President was 926; for governor, 934; for Congress, as counted, 931.

The testimony tends to show that Mr. Metcalfe ran ahead of his ticket and Mr. Frost behind his. The number of officers to be elected was very great, and the record shows that the aggregate vote for Congress is not as large as the whole vote polled. The poll-books were examined by Mr. Walsh, a witness for contestant, who is asked the question:

Is there anything in those figures [alluding to the vote received by the various candidates for office] to indicate that 25 votes were counted for Metcalfe twice?

Answer. I do not see anything here.

Taking all the evidence to be true as given, there is nothing in it to prove that 25 votes were counted twice for Metcalfe, and thus invalidate a return made by officers, a majority of whom are of contestant's political party.

Sixth. The contestant asks that the whole poll at No. 77 be set aside and discarded, because the return was tainted with fraud by handling and tampering with the ballots and tallies.

The only evidence on this subject is given by the deputy United States marshal, Wortman. The contestant does not call any of the judges or officers conducting the election, a majority of whom were Democrats, to sustain this charge. As before said, the law presumes public officers did their duty. The returns are in due form, and were duly counted. According to the showing of this witness, the falling out of the ballots was purely accidental. Then why not have called some of the officers to prove these facts if they existed? The failure to call them raises the presumption that they would not sustain the charge. They do not occupy the position of parties charged with fraud testifying in their own behalf, but they are presumed to be impartial and disinterested, or, if partial, a majority of them are presumed to lean towards contestant, therefore would have been willing to tell the truth in his behalf.

To set aside a formal and regular return made by sworn officers of both political parties, upon such evidence, would set a dangerous precedent, and render popular elections but a name and a mockery.

enth and eighth, in regard to the appointment of United States marshals, may be treated together.

Our committee deprecate the appointment of United States marshals on any pretext. If they are intended as conservators of the peace, the power of the State is ample for that purpose. If they are in any way to interfere in the elections, it is clearly a violation of the laws of the States for them to do so. But the law of the United States forbids the appointment of deputy marshals, and the same must be respected and not altered or repealed. It does not limit the number. The question at issue is, was the conduct of the marshals such as to invalidate the election? It cannot with any strong reason be urged that this committee shall make an estimate from conjecture how many voters they were influenced by their conduct. Nor would it be safe or warranted that the marshals alleged to have been bribed, would, but for such bribe, have voted the other way. If the conduct of these deputy marshals was such as to pollute the whole vote of the district, then the committee could not do good from the bad voters and declare a result, but would be obliged to find there had been no fair expression of the popular will, and that no legal election had been held.

The testimony of the witnesses called by the contestant to prove bribery and fraud on the part of those marshals is very vague and unconvincing. Some eight were introduced, who do prove that they were bribed with the promise expressed or implied that they would vote for Metcalfe, but five admit they voted for Frost; two say they voted for Frost, but they preferred him, and were in no way influenced by the bribe.

One did not vote at all. So that the evidence, so far as it goes, tends to repel the presumption that the 728 deputy marshals were induced in their votes by reason of their appointments. To say the contrary of it, the testimony is not very reliable, coming as it does from men who confess their own abasement and degradation.

There is nothing in this evidence that would justify your committee in transferring any votes from Metcalfe to Frost or deducting any from Metcalfe, much less would it justify them in setting aside the whole election.

Our committee having carefully examined all the questions raised in this case, can see no reason why the sitting member should be unseated; and therefore they recommend the adoption of the following resolutions, to

Resolved, That R. Graham Frost was not elected a member of the thirty-fifth Congress, and is not entitled to a seat in the House of Representatives from the third Congressional district of Missouri.

Resolved, That Lyne S. Metcalfe was elected a member of the Forty-third Congress, and is entitled to a seat in the House of Representatives from the third Congressional district of Missouri.

JOHN T. HARRIS.
JACOB TURNEY.
THOS. R. COBB.
MILTON A. CANDLER.
JERE. N. WILLIAMS.
E. JNO. ELLIS.

concur in conclusion.

FRANK HISCOCK.
JNO. T. WAIT.
J. M. THORNBURGH.
H. PRICE.

FORTY-SIXTH CONGRESS.

COMMITTEE ON ELECTIONS.

William M. Springer, of Illinois.
Van H. Manning, of Mississippi.
Emory Speer, of Georgia.
Walpole G. Colerick, of Indiana.
R. F. Armfield, of North Carolina.
Frank E. Beltzhoover, of Pennsylvania.
Samuel L. Sawyer, of Missouri.
Elijah C. Phister, of Kentucky.

J. Warren Keifer, of Ohio.
John H. Camp, of New York.
William H. Calkins, of Indiana.
Walbridge A. Field, of Massachusetts.
Edward Overton, jr., of Pennsylvania.
James B. Weaver, of Iowa.
Alvah A. Clark, of New Jersey.

S. M. ETTER, *Clerk.*

FORTY-SIXTH CONGRESS.

JOHN M. BRADLEY vs. WILLIAM F. SLEMONS.

SECOND CONGRESSIONAL DISTRICT OF ARKANSAS.

Contestant took some portion of his testimony more than forty days after service of contestee's answer, but within forty days of the date when he commenced taking testimony, when contestant claims the time commenced to run.

Held, That the time when contestant may take testimony-in-chief commences to run from the date of service of answer of contestee upon him. The law furnishes each party ample opportunity for taking testimony if ordinary diligence is used.

The result of an election can in no manner be affected by the failure of certain townships in the district to hold an election where no reason is assigned and shown for the failure to hold such election.

The circulation of false and fraudulent posters a few days before an election announcing another person as the candidate of a party for Congress, and intended to deceive the voters of that party, and lessen the vote which would otherwise have been cast for contestant is dishonorable, and if the evidence established the complicity of contestee, and its effect upon the voters produced a result different from that which otherwise would have occurred, the election should be set aside and a new one ordered.

The House adopted the majority report March 31, 1880.

MARCH 8, 1880.—Mr. SAWYER, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested-election case of John M. Bradley vs. William F. Slemons, from the second Congressional district of Arkansas, having had the same under consideration, beg leave to report:

The claim of the contestant to the seat occupied by the returned member is based upon a variety of alleged grounds, many of which are entirely unsupported by any testimony whatever. Before commencing the discussion of the merits of the controversy, we deem it proper to express our disapproval of that portion of contestee's answer to contestant's notice of contest which indulges in personalities. The practice itself is unbecoming the dignity of the House, and we regret the necessity has arisen of imposing on the committee the duty of calling attention to the subject.

The Congressional district is composed of twenty counties, in only three of which was testimony taken, viz, in the counties of Jefferson, Chicot, and Hempstead, and at the very threshold of our inquiry we are

met with an objection by the contestee to the consideration of any portion of the evidence taken by the contestant in the counties of Chicot and Hempstead, for the reason that the forty days allowed by law to contestant in which to take testimony-in-chief had expired before the taking of evidence in said Chicot and Hempstead Counties commenced.

Protests of contestee were duly entered on the record against the taking of such testimony. Contestant, however, contends that, as he commenced taking testimony on the 18th day of February, 1879, the forty days allowed him commenced running from that day, and this view, if correct, will entitle him to the benefit of the testimony taken in those two counties.

Section 107 of the Revised Statutes provides that the time allowed for taking testimony shall be ninety days, and it shall be taken in the following order: The contestant shall take testimony during the first forty days, the returned member during the next forty days, and the contestant may take testimony in rebuttal *only* during the remaining ten days of said period.

In order to settle definitely from what time the forty days allowed to contestant in which to take his testimony-in-chief should begin to run, it is provided by the act of Congress upon the subject of contested elections, approved March 2, 1875, that section 107 shall be so construed as to require that, in all cases of contested elections, the testimony shall be taken within ninety days from the day on which the answer of the returned member is served upon the contestant. (Statutes 1875, chap. 119, section 18, p. 338.)

The answer of contestee to contestant's notice of contest was served on contestant on the 29th day of January, 1879 (page 6). The time, then, for taking contestant's testimony-in-chief expired on the 10th day of March following. The taking of testimony by him in Chicot and Hempstead Counties was commenced in Chicot County on the 20th day of March, ten days after the expiration of the time allowed to him, and was closed in Hempstead County on the 28th day of March. The provisions of the statutes referred to cannot be disregarded, and contestant, without leave of the House, was unauthorized to take further testimony-in-chief after the 10th day of March, when his time for that purpose expired.

The law is intended to, and does, furnish each party ample opportunity for taking testimony, if ordinary diligence is used; and especially is this the case, when it is considered that a party may take testimony at two or more places on the same day. This wise provision of the law furnishes a strong reason against an extension of time in ordinary cases like the present. (*Boles vs. Edwards*, second session Forty-fifth Congress; *Vallandigham vs. Campbell*, Thirty-fifth Congress; *Carrigan vs. Thayer*, Thirty-eighth Congress.)

No application was made to the House by contestant for an extension of time, and the question is now clearly presented whether, without any cause whatever being shown therefor, the testimony thus taken out of time shall be admitted and considered. Another important fact may be considered in this connection. It appears from an examination of the record of the testimony that the time actually consumed by contestant in taking the entire testimony returned, including that taken beyond the time allowed by law, was only eighteen days; thus establishing the fact beyond controversy that he could, by the use of ordinary diligence, have taken the entire testimony within the time allowed him by law without trespassing upon the time allowed to contestee. In view of these facts, no reason exists why the committee should consider the

testimony taken in Chicot and Hempstead Counties, or should recommend that it be considered by the House.

The first point made by contestant is, in effect, that a corrupt conspiracy was formed and partially carried into effect, by the friends of the sitting member, to regulate and control the election in Jefferson County, at least, in his interest, regardless of the provisions of the laws of Arkansas regulating elections. As preliminary to an examination of the testimony upon this point, and as incidentally connected therewith, it may be proper to remark that the evidence clearly discloses the following facts:

For the purpose of correcting abuses which had prevailed in the administration of public affairs in Jefferson County in the summer of 1878 and several weeks prior to the election for county officers, which was held on the 8th day of September of that year, two months prior to the Congressional election, several prominent men of both political parties held conferences at different times and places with a view of presenting to the people for their suffrages a county ticket composed of candidates from each party best qualified for the several positions to be filled, and who would not be objectionable to either, which was termed a compromise ticket. These conferences were held, as the testimony discloses, solely with reference to a county ticket; no allusion whatever being made to the Congressional race. Indeed, no portion of the entire evidence refers, even remotely, to any other than the candidates for county offices, nor does it appear that the Democratic Congressional convention had then been held.

The result of these several conferences was, a compromise ticket was presented to the county conventions of the two parties and finally nominated by each, although not with entire unanimity. An anti-compromise ticket was also nominated, also composed of candidates from each party. The result of the election was in favor of the compromise ticket. (See pages 60, 62, 63, 66, 70, 76, and 80).

To return to the evidence in the record bearing upon the alleged conspiracy under consideration, we find that upon cross-examination of George Haycock, a witness for the sitting member, he is questioned particularly in regard to the authenticity of Exhibit A, which is attached to his deposition, and which exhibit is as follows:

Exhibit A, referred to in George Haycock's deposition.—F. J. Wise. N. P.

HOW THE SALE WAS MADE.

Colonel HAYCOCK. Well, gentlemen, under the benign influence of this back room of a bar-room, we have grave matters of state to settle, and they must be handled with the skill of a diplomat and the courage of a Cæsar, Major Newman, or of General Grant.

Colonel CLAYTON. Well put in; a good amendment.

General PORTIS. This plan may require both the skill of the politician and the bravery of a soldier, and Colonel Corcoran and I only promise the latter. As to pulling the wires, you gentlemen must do that.

Colonel PRIGMORE. Well, by God, I don't propose to have any fighting in mine, but if you want any plans carried out in a dexterous way, any midnight watching done, I am your man.

Colonel WHITE. Well, I want this thing done as near by the statute as we can. But if there must be a break over, and we, as high contracting firms, make agreement to that end, then we must stand to each other.

Colonel HAYCOCK. Here is my hand on that. [They shake.]

Colonel CLAYTON. And mine.

Colonel PRIGMORE. And mine.

General PORTIS. And mine.

Major NEWMAN. And mine, and my dainty little foot, too, and my heart, too. [They all shake and pull Newman's big toe.]

Colonel HAYCOCK. Well, there need not be much talk about it. Colonel Clayton, Prigmore, and Judge Silverman here know the negro is not reliable; that we can't trust him. His vote costs more than the office is worth. We want to devise some plan to get what offices we do get for less price. It is business with us. The truth is, the devils should never have been allowed to vote anyway. Of course, I could not tell them so, but you all know it is so. Now, take Dawson and Paul Jacko and Fred. Harris; they are the most intelligent of any of them, and they are no more fit to fill office than a Hottentot. We have let them fill office because we had to keep them in good humor, but if you Democrats will stand up to us, not another negro shall ever hold an office in this county.

General PORTIS. But can you all control the negroes? Won't they run a ticket of their own?

Judge SILVERMAN. Oh, they are just like so many cattle; take the herders away and they will stray off everywhere. The white Radicals have kept them headed together. But as soon as we quit leading, they are done for. You know that I am going to Markas; I have got my pay to resign; and you Democrats can put a man in my place to handle the returns, to fix up the townships, and appoint your kind of judges, and then you have got them.

Colonel WHITE. But what are you going to do with Hugh Kenyon, Snyder, Judge Rice, and Vaughn?

Colonel HAYCOCK. Snyder is a mere wind bladder, a gas pipe, a blow hard, a mere pygmy; when Clayton and Prigmore and myself take our support from him he will go to the devil.

Colonel CLAYTON. I think so. He has certainly got more pay from the Republican party for less work than any man in it.

Colonel HAYCOCK. And as to Kenyon, we had to drop him last election because he did not subserve the best party purpose. Rice and Vaughn are old party hacks, perfectly played out; and none of them can control a negro.

Judge SILVERMAN. Can you all manage your side of the house?

Major NEWMAN. You bet. They will do anything General Portis, Colonel White, and myself say. The whole country people look to us to lead them; they have not sense enough to lead themselves; they don't know anything about politics; they would vote for Ben. Butler if we were to tell them to.

Colonel WHITE. Well, that is perhaps putting it too strong; but they will do most anything we tell them. They look to Pine Bluff for advice, and we have got the principal men here to advise them when they go to them to accept it, and we will see Jackson, and Regan, and Bronson, and Oliver, and men like them from the country when they come to town and have them fixed up right, and it will all go right. We can bamboozle them.

Colonel HAYCOCK. Well, now, how shall we do it? Let us proceed to business. Let us have an understanding.

Colonel PRIGMORE. I want for my part to keep my office. That is what I want to trade for. I want to still be circuit clerk.

Colonel CLAYTON. Yes; and I want to keep my office. I have got a good thing if I can keep it.

Colonel HAYCOCK. I am postmaster, and that is all I want. But I want you all to promise me not to try to have me removed.

Major NEWMAN. I want to go to senate; and I think I am the best man in the county for that place. I can help you all, and besides I will give dignity to the place.

Colonel HAYCOCK. Not more than I did.

Major NEWMAN. Beg your pardon; I did not intend to reflect upon you.

General PORTIS. Well, I want Arch. Nevins to be county clerk, and Willis Johnson county judge. This will fix things just like we want them.

General PORTIS. Then I want the balance of the offices for the Democrats.

Colonel CLAYTON. That is all right. Except township offices; let them take care of themselves.

General PORTIS. Boys, I'll tell you one unruly ones; that is John Ellis; and Burton, and Dave Robinson, and George Robinson, and a few more are about as bad.

Colonel HAYCOCK. Pshaw! They are not a bit in the way. We will make them do just what we say. We can buy either of them for a five-dollar note.

Colonel CLAYTON. Now, we can get our convention to adopt this, and if we can't we will have to nominate Prigmore and myself first, and then we will break it up in an hour.

COMMITTEE. How about the German element? It might make them mad to be left out.

Major NEWMAN. D—n the Dutch! Sam Franklin is talked of for the senate, but, pshaw, you don't suppose he can cope with me; besides, the Dutch ain't honest enough to be officers. I'll manage that.

Colonel HAYCOCK. So we all agree. Now, when shall it be carried out?

General PORTIS. Next Monday let us all go to Little Rock and have Johnson appointed, Silverman's resignation accepted, and then it will all be fixed.

Colonel WHITE. I can't go.

Colonel CLAYTON. Nor I; I can't leave court.

General PORTIS. Then Major Newman, Colonel Haycock, Judge Silverman, and myself will go.

Major NEWMAN. That will do. That is just it.

The conclave disbanded, the party went to Little Rock; Silverman resigned, Johnson was appointed, and now the property is ready to be delivered. * * *

RECAPITULATION.

Major NEWMAN. I am a politician; must win, no matter how; can't fail; Potter investigation notwithstanding.

General PORTIS. Hold on, boys; by God, we had better see these fellows from the county about this thing. But never mind, go on now (got the judge, that much made).

Colonel CLAYTON. Now, gentlemen, we are men of honor; none of this must be divulged. I don't want the office longer than one more term. I don't believe in negro officers; the white people ought to rule. (To Prigmore.) We are inseparable, and this is our last chance. (Prigmore to Clayton.) Yes; that's so; and, John, I haven't had the office but ten years.

Colonel WHITE. Since—d—n this thing. I believe I'll wait till the people have a chance to say something about it.

Colonel HAYCOCK. Well, here now; it's all settled.

The entire testimony relied on by contestant in support of the truth of the statements contained in the above exhibit is contained in the cross-examination of George Haycock, and is as follows (pages 82 and 83):

Q. Did you, or these Republicans with whom you talked and were co-operating in this matter, have any conferences with the Democrats mentioned in connection with the compromise ticket?—A. Yes; we had several talks about it with one another at different times and places. Sometimes at the court-house; at the clerk's office; in the rear room of Mr. Ray's saloon; also at Judge Silverman's; but all these talks, as far as the compromise measure was concerned, was about the county officers of the county.

Q. Was not the main object of this measure to defeat what you call the color line in connection with the county officers?—A. As far as defeating the color line was concerned it was not, for we did not intend to defeat any one as far as color was concerned, but to elect men who were honest and capable of filling positions.

Q. You speak of several meetings and conferences which you had in connection with compromise, one of which you mentioned was in the back room of A. Ray's business house; what kind of a business house is that?—A. It is a saloon in front and a restaurant in the rear.

Q. Who was present at that meeting?—A. John M. Clayton, G. W. Prigmore, Judge F. Silverman, W. N. Portis, George Haycock, being myself, C. G. Newman, H. King White, N. T. White.

Q. When was that meeting held?—A. I think it was held a month or a month and a half previous to the election.

Q. Who was the county judge at that time?—A. I think Judge Silverman was; it was about the time he was talking about resigning on account of receiving an appointment as consul.

Q. Please designate which of those named above were Democrats and which Republicans?—A. John M. Clayton, G. W. Prigmore, Judge Silverman, and myself were Republicans, and W. N. Fortis, C. S. Newman, H. King White, and N. T. White were Democrats.

Q. Please state if the paper here presented to you, entitled "How the sale was made," and which I now annex to your deposition, and marked "Exhibit D," is not a correct statement of the conference and meeting referred to in the back room or restaurant of A. Ray, and does it not substantially set forth the spirit, sentiment, language, and results of the said meeting or conference?—A. There is not a particle of truth in it, and it was gotten up as a burlesque.

Q. Do you know how it was gotten up?—A. I do not know how it was gotten up, but I know it is untrue as to all the sayings.

Q. Were not all the parties named in this paper as engaging in it present at this meeting?—A. They were all there.

Q. Did not Judge Silverman resign at that time or immediately after?—A. He resigned about that time.

Q. Did not General Portis, Major Newman, Judge Silverman, and yourself go to Little Rock a few days after that conference?—A. We did.

Was not that a part of the agreement at that conference, that you should go?—
sir.

Was it not stated then and there that you would go?—A. Judge Silverman had
lying for two or three weeks prior to that meeting that he must resign to accept
appointment, and wished me to go with him when he went to Little Rock to ten-
resignation to the governor; it was talked about in the meeting as to his res-
n, but that was left to himself. If he did resign I wanted Judge Johnson ap-
l.

Why did General Portis and Major Newman go?—A. Because they wanted Judge
n appointed.

Was that understood at that meeting?—A. Nothing more than if Silverman was
ined to resign they would use their influence for Judge Johnson.

Understand you to say that yourself, Major Newman, General Portis, Judge
an, all went to Little Rock to get Silverman's resignation accepted, and have
Johnson appointed county judge. Did you four gentlemen not go to the gov-
nd get Judge Silverman's resignation accepted and have Judge Johnson ap-
l?—A. We did.

Were not certain men designated for the different county offices in that meet-
A. They were not.

Were they not suggested?—A. Quite a number of names were mentioned, but
clusion came to; the main object was to put Republicans on the ticket that
ot obnoxious to the Democrats, and those Democratic candidates who were not
ous to the Republicans.

Was not the name of W. D. Johnson suggested for county judge and Arch.
as county clerk?—A. W. D. Johnson was mentioned by some of the Repub-

Mr. Henry Young was mentioned by other Republicans as being the man
uld not be obnoxious to them, and Nevin's name and Mr. Currie's name was
ed, and some others whom I do not recollect, but no conclusion was ar-
d.

Will thus be seen that the evidence relied upon to establish the
of the statements contained in Exhibit A clearly proves their
, and, in connection with the entire evidence, shows that the sev-
meetings and conferences alluded to were held solely for the purpose
orming abuses and preventing corruptions which had previously
d in the administration of county affairs, and, it may be added,
vidence shows the final result to have been beneficial to the people
erson County, in the election of officers who were honest and ca-
(page 64).

ection is also made by contestant to the manner of opening the
n Vaugine Township, the election of judges in place of those who
absent (one, as alleged, not being present at the time of the elec-
intimidation of voters, and the manner of counting the votes.

charges thus grouped together are evidently made, not for the
se of having the election in that township set aside (for contestant
thstanding, it may be safely inferred, received a majority of the
cast), but to lay the foundation for a claim that an additional
er of votes should be counted for him. In support of these charges
stant relies upon the testimony of A. A. Rogers, which is as fol-

tate what you know of the manner of conducting the said election in Vaugine
hip, in this county.—A. I was in the court-yard, where the election of said
ip was held, early in the morning of that election day, and saw that there was
g of intimidation among many of those whom I met upon the streets, caused
, as I supposed, by the arrest of a United States supervisor of election in an ad-
; township, who was under arrest and in the hands of an officer upon or near
rt-yard. Colonel Bradley and myself inquired into the cause of the arrest, and
ng no satisfactory answer, repaired to the office of the magistrate who we un-
d had issued the warrant, accompanied by the constable and the party arrested,
manded a trial; this was refused; bail was offered, and it, too, refused; then,
ing to the court-yard, the hour for opening the election having arrived, we
entrance to the court-house door where the election was to be held and found
or locked; we were followed closely by a leading Democrat; we then went to
rk's office and found it also locked; after an interval of twenty minutes, per-
we returned to the door of the court-house and found it still locked; met a voter

inquiring if the polls were open; he retired; we then went to the clerk's office the deputy clerk just entering the door, and asked him where the poll-books and if he did not intend to hold an election; the same leading Democrat followed close behind, and demanded to know what right we had to poll him. I said none, but simply wanted to know if they intended to open the polls and election. The sheriff said that he had given the poll-books the day before the judges of the election, and that he did not know where the judges were, and quiring from others I was told the judges had left town.

I then repaired to my store; got pen, ink, and paper for both this and the voting precinct in the city; returned to the court-house and found a table where election was ordinarily held; returned to get a lawyer to see that the heading poll-books was properly made, officers duly sworn, &c., intending to have an election but upon returning found that the opposite party had met and elected officers were proceeding to hold the election, all the officers being political friends of Mr. Slemons. One of the judges elected was not a bystander, but was sent for, as he afterwards told me. The election was proceeded with in the court-yard nearly the whole day, and was conversant with what transpired in my judgment, was not a free or fair one. Under pretense of certain license question, Bradley tickets, having neither license or no license them, and the major portion of Slemons's friends being for license, the Bradley tickets in the hands of several colored voters were taken under the pretense of license under them, and instead of making this pretended change the name M. Bradley was scratched and the name of W. F. Slemons substituted called attention. On one occasion, whilst standing at the ballot-box and Bradley ticket to a colored friend who asked for it, he handed the ticket to one of the judges, but before it fairly passed out of his hands a deputy sheriff put a ticket in the hands of the judge, took the Bradley ticket, and the judge Slemons ticket in the box. My attention being called to this, I took down the name of the deputy sheriff; and seeing me writing he announced his name and to write it down.

About noon, or a little after, several men who appeared in the court-yard of Colonel Slemons, and in a very boisterous manner ridiculed and abused Colonel Bradley, changing from that, in a boisterous way claiming to be friendly to Bradley view, as I verily believed, to drive from the support of Bradley a large number of colored voters upon the street who had not voted. Later, an assault was made on Bradley directly by one of the political leaders of Mr. Slemons, backed by the sheriffs, as I could see, and others, the friends of Mr. Slemons; and a general break was imminent, and but for the coolness, forbearance, prudence, and of Colonel Bradley and his friends, who counseled peace, there would have been serious difficulty, such was the feeling of those engaged. Some of Colonel Bradley's friends interfered also in behalf of law and order, and the matter ended. This many of Bradley's friends, fearing trouble, left the court-yard without Just before the polls closed at this precinct Colonel Bradley and I repaired to the voting-precinct in the city to inquire of the vote at that point, and were met thought, in an insulting way by one of the judges, whereupon we left. The entire day there seemed to be a disposition to override and carry the day without regard to the manner of doing it. Further, there was, as I conceived, a disposition the part of the judges to unnecessarily question colored voters about their means of knowledge, even in the presence of their fathers, who said to voters, and were willing to swear it, and by this course a number were refused a vote. A few days after the election a conversation with one of the judges of the election held at the court-house box in this township, a personal friend of Colonel Bradley and myself, was had, in which said judge of the election stated that they, the judges, took the ballot-box from the court-house, where the vote was taken to the law office of Met. F. Jones, a political friend of Colonel Slemons, where it was counted in the manner following, to wit: each one of the judges took on a full set of ballots from the box and laid them before them on the table where they were rested and counted by hundreds, and then required the clerks to tally the hundred according to the count of each judge, and so on until they were through.

To disprove the evidence of Mr. Rogers contestee offers the testimony of W. N. Portis and George W. Prigmore. Mr. Portis (p. 90 and 91) states:

About 8 o'clock in the morning on the day of election there was a large crowd assembled in front of the court-house waiting for the polls to be opened but one of the judges who presided at the September election had made his appearance, it became necessary to elect two more. They were elected from the present at the court-house. Mr. Sam Franklin was one, and a Mr. C. W. Do the other, who were both present at the time of their election. Then the pro-

ed in regular form and the balloting commenced. As soon as the court-house were opened we proceeded to the lower poll in Pine Bluff, and two of the regular judges being absent, two judges were elected from the bystanders. Mr. Thomas Leche was one; I do not remember the other. Mr. M. K. Hunter was the regular present, both polls being opened in an orderly and quiet manner. Question. What have you to say as to the conduct of the election on that day as to fairness or unfairness?—Answer. It was a fair election as far as I observed. I saw no prohibited from voting on that day that was entitled to a vote.

What evidence of intimidation did you see?—A. None.

George W. Prigmore (page 68) says:

was the most orderly election in Pine Bluff I have seen for seven or eight years; confusion about the polls. Slemmons's Democratic friends seemed to be taking considerable interest. I saw no one taking any active interest for Bradley except him—Mr. Rogers, and perhaps two or three colored men.

An examination of the testimony adduced by contestant upon these facts exhibits a failure to specify facts tending to prove the charges made, except, perhaps, that portion which relates to the fraudulent giving of a ticket of a colored voter by a Mr. Helzain, which is flatly contradicted by him (page 93), and that portion which relates to an assault made on contestant by Mr. W. N. Portis. A reference to the testimony of Mr. Portis (page 91) will show that the assault was made in sequence of insulting language used by contestant towards Mr. Portis and that the next morning contestant, upon reflection, acknowledged himself in fault, and apologized for his conduct. As to the manner of counting the votes in Vaingine Township, it will be observed that the evidence on that point is that of a single witness, whose testimony is strictly hearsay, and which has been too often decided inadmissible to now considered an open question. Besides, the ballots are required by the constitution of Arkansas to be numbered, and the number recorded on the list of voters, which are still in the custody of the clerk of the county court, in whose charge they are placed by law, after being merely enveloped and sealed, and there they are required to remain many years unopened except in case of a contested election (constitution of Arkansas, article 3, section 3; Statutes of Arkansas, "act providing a general election law," page 100, section 45, page 109, section 1). One of the poll-books is required to be securely enveloped and sealed by the judges of the election precinct, and delivered to the clerk of the county court; the other is left in the custody of the judges, free to the inspection of all persons (sections 42 and 43). It will thus be seen that every facility is afforded by law for the inspection of the poll-books and the examination of ballots, and a fraudulent count could easily have been detected and proven.

The same act, section 5, provides:

if the court shall fail to fix a place at which elections are to be held in any town, or to appoint judges of elections, or those appointed fail to act, it shall be the duty of the sheriff to fix a place for holding the election; and the voters when assembled may appoint the judges, who shall, in all respects, perform the duties of judges of elections required by law.

It thus appears that the judges were appointed according to law; that there was no serious, if any, intimidation. The polls were opened and the election conducted with fairness and pursuant to law. So far as the testimony shows, there was no unfairness in counting the vote. These being the most essential requisites of a fair election, no cause exists for interfering with the vote of Vaingine Township. Another charge is that the ballot-boxes in Pine Bluff and other precincts in Jefferson County were stuffed by the friends of contestee, and

thus a much larger vote was counted for him than he actually received. In support of this charge the testimony of Daniel M. Robinson is relied upon, which we deem proper to insert in full. His testimony upon the subject is as follows:

DAN. M. ROBINSON, a witness produced and sworn, testifies as follows:

Question. What is your name, age, residence, and occupation?—Answer. My name is Dan. M. Robinson; am aged twenty-four years; reside in Pine Bluff, and am printer.

Q. How long have you resided in the city of Pine Bluff, in the county of Jefferson, Arkansas?—A. About sixteen years.

Q. In what business were you engaged in the month of November, 1878, and on the 5th day of that month, the day of the last Congressional election?—A. I was working in the Press office of Major Newman, in Pine Bluff, commonly known as the new paper office of the Pine Bluff Press; was working as a printer on that day.

Q. State whether or not you know of any election tickets having been printed at that office on that day with the name of W. F. Slemmons thereon for Congress of that district?—A. Yes, sir.

Q. Give as near as you can the words printed on those tickets.—A. To the best of my recollection it was this: "For Congress in the second district, Hon. W. F. Slemmons. Against license."

Q. How many of those tickets were printed?—A. There were between three and four thousand.

Q. At what time during that day were those tickets printed?—A. Those I saw were printed between half-past 5 and 6 o'clock in the evening of that day.

Q. Do you know who got said tickets from the printing office?—A. I can't say. I saw Col. George Haycock, Maj. W. N. Portis folding up some of the tickets on the press.

Q. State all you know about the printing and distribution of those tickets.—A. At that time I was working for Major Newman in the Pine Bluff Press office. He gave me a ticket to set up—the ticket I have above described; I worked off one thousand and was sent to the rear of the office by Mr. Ryan, the foreman of the Press office. Markey Burnatt took my place at the job-press where the tickets were being printed.

Q. How long did Marcus Burnatt work at the printing of said tickets?—A. I left at 6 o'clock p. m., and he was still working there.

Q. Where is Marcus Burnatt now?—A. I think he is in Philadelphia, Pa.

Q. Do you know who brought the job in question to the office, and who corrected the proof?—A. I don't know who brought the job to the office, but Major Portis and Col. George Haycock corrected the proof.

Q. Did you leave said printing office, and Burnatt engaged in printing said tickets before or after sundown of that day?—A. After sundown.

Q. State whether or not the parties, to wit, George Haycock and W. N. Portis, were folding up some of the tickets alluded to above before or after sundown?—A. After sundown, just as I was leaving the office.

Q. State, if you know, who the said George Haycock and W. N. Portis supported the said Congressional election?—A. I can only say that according to my best belief that they supported W. F. Slemmons.

Q. Can you give the politics of the Pine Bluff Press?—A. Democratic at the masthead.

Q. Do you know of any circulars having been printed at that office within four weeks previous to the date last mentioned, which circulars announced John A. Williams as a candidate for Congress from this district at said election?—A. I do not, sir.

Q. Did you see W. F. Slemmons at the Press office at any time within a week or two before the election?—A. Yes, sir; I saw him there probably a half dozen times.

Cross-examined by Col. M. L. JONES:

Q. Who put you on the job of printing those tickets on the 5th of November 1878?—A. Maj. C. G. Newman.

Q. What directions did he give you?—A. None at all, only to set up the job.

Q. Who was in the office while you were setting the job up?—A. The regular men who worked there.

Q. Please name them.—A. Sam Ryan, Arthur Murray, Marcus Bernath, Joe Markun, Ambrose Lynn.

Q. Did these men, including Mr. Ryan, the foreman, know that you were setting up this job?—A. Don't know whether they did or not; suppose Mr. Ryan did.

Q. Was it regarded as a confidential job?—A. All jobs are confidential when not otherwise ordered in a printing office.

Q. Was this job put under any particular secret instructions?—A. Not that I know of—only the secrets that bind us together.

- Q. At what time was that job brought to the office?—A. It was brought there some time about 1 or 2 o'clock.
- Q. Who brought it?—A. Can't tell you, sir.
- Q. To whom was the job delivered?—A. Don't know, sir.
- Q. How do you know when it was brought?—A. Major Newman handed it to me.
- Q. What directions did he give you?—A. He told me to set the job up.
- Q. Did he say when he wanted it finished?—A. Said he wanted it done some time that evening.
- Q. What time did you set it up?—A. About 4 o'clock.
- Q. What time did Haycock and Portis read the proof?—A. As I was going out the back door. I think it was a quarter or half past 4 o'clock.
- Q. Did you come back after you went out of the back door?—A. Yes, sir.
- Q. How many of these tickets did you strike off?—A. A thousand.
- Q. Where did you go then?—A. Went in the back part of the office.
- Q. What did you do there?—A. Set up some time type for the paper, cleaned up "Herald," and two or three more things.
- Q. Where did you go then?—A. Then I went home, out of the front door.
- Q. What time did you go home?—A. Six o'clock.
- Q. Where were the tickets when you went home?—A. Part of them were laying on the press, and the boys were printing them when I went home.
- Q. How many were worked off when you left?—A. About a thousand.
- Q. Did you see anything more of the tickets?—A. No, sir.
- Q. What had you been doing before you went to the Press office?—A. Can't tell you, sir. About three weeks before that I had been working at the Republican office.
- Q. What was the politics of the Republican office?—A. Independent Greenback.
- Q. What was your politics?—A. Democratic.
- Q. Did you not go to Little Rock in July as a representative from Jefferson County to a supposed Greenback convention?—A. I did not.
- Q. Did you go to Hot Springs as such?—A. I did not. I went to the press convention, and in company with Major Newman, who was editor of the Pine Bluff Press, who was and is a Democrat.
- Q. While at Little Rock, was there a Greenback meeting held?—A. Not to my knowledge.
- Q. Did you send John M. Bradley the following telegram, to wit: "Greenback convention harmonious, and all for you"? (This question was objected to by E. W. Martin, for contestant, upon the grounds of irrelevancy and not responsive to the examination-in-chief, but does not object to its being answered.)
- A. I did not.
- Q. Who did the Republican office support for Congress?—A. John M. Bradley.
- Q. Whose election did you advocate?—A. I did not advocate anybody. I voted for W. F. Slemons.
- Q. Have you any knowledge to what use these tickets were put?—A. No personal knowledge.
- Q. Do you know that they were ever taken from the office?—A. I do not.
- Q. Do you know for what purpose they were ordered?—A. I do not.
- Q. Was the Press office being run on the day of the election?—A. I think it was.
- Q. Are you sure that Ryan, the foreman, knew of the printing of those tickets?—A. I suppose he did. He was around there and saw me setting them up.
- Q. Are you sure that Major Newman gave you the job?—A. I have already testified to that fact.
- Q. Are you sure that Haycock and Portis read the proof?—A. Only this: They said it was all right. They were standing over the job after some of them were struck off, when they said "It is all right."

The foregoing testimony of Mr. Robinson is all that is offered by contestant in support of the charge under consideration.

George Haycock, one of the persons mentioned by Mr. Robinson in his testimony as engaged in correcting the proof and folding the tickets as late as half past 4 or a quarter past 4, testifies as follows:

Q. I see in the testimony of Dan M. Robinson, examined for contestant, that he alludes to a ticket transaction, and says that you had connection with it. I will read you a copy of his testimony to see what you have to say about it. (Contestee here read copy of his testimony.)

(Question objected to by attorney for contestant for the reason that this mode of examination is conceived to be improper.)

A. The morning of the election, after the polls had opened, I discovered the tickets of Mr. Slemons had not printed on them "for or against license." I went to General

Portis, as I understood he had charge of Colonel Slemons's tickets for distribution, and asked him if he would have any objection to having printed on them, or getting out other tickets for Slemons with the words "for license" printed on them, if we defrayed the expense of the same. I then went to Mr. Ray and Mr. O'Connell and Mr. Brockway, and they contributed money to have some tickets struck off. I then went up to the printing office and had a number stricken off. I never handled or distributed any of the tickets. Parties wanting tickets of that kind during the day I sent them to the printing office for them. I also got a few slips printed with the words "for license" on them, to be pasted on the tickets that had not these words upon them. I was not at the printing office or near the printing office after 3 o'clock in the afternoon.

Q. Do you know what time these tickets were printed?—A. I went to the printing office between 9 and 10 o'clock in the morning, and ordered the tickets printed. I went back between 10 and 11 o'clock, and some of the tickets which I had ordered were printed. I left word that if any one called for these kind of tickets for distribution to let them have them.

Q. Is that all the tickets you had anything to do with?—A. That is all the tickets I had anything to do with.

Q. Why were yourself, Ray, O'Connell, and Brockway interested in having "for license" on the tickets?—A. Because we were engaged in the liquor trade; that was the day prescribed for the local-option election.

Q. You state in your direct examination that you gave an order to have tickets printed with the words "for license" on them, and that you went there between 9 and 10 o'clock in the morning and left the order and went back between 10 and 11 o'clock and found some of the tickets were printed, and state you never handled or distributed any of the tickets, and left the printing office, and did not return there after 3 o'clock in the afternoon; were you there after 11 o'clock on that day?—A. I think I went up there after that time, but not after 3 o'clock of that day.

Q. Were the tickets printed when you were there the last time on that day?—A. There were some printed. I did not take the interest in looking after the tickets after giving the order, for when I came down town I found a number had been writing on the bottom of the ticket the words "for license," and some of the parties interested in voting for license thought they would make their tickets answer the purpose, but I did send parties, or inform interested parties, that I had left the order for the tickets to be printed, and if they wanted them to send after them.

Q. How many tickets did you order printed?—A. I don't know the number. I left five dollars to pay for the printing.

Q. What arrangement had you for distributing these tickets?—A. I had left word with Ray, Mr. Brockway, and Mr. O'Connell where they were. I made no other arrangements.

Q. Were these tickets ever distributed?—A. I do not know.

W. N. Portis, another of the persons mentioned in the testimony of Mr. Robinson as connected with the ordering and folding tickets at the late hour mentioned, testifies as follows:

Q. State the particulars of the tickets struck off at the Press office for you on the day of the election?—A. There being a great many tickets destroyed during an election here, we have generally had a large number of tickets struck off; and during the day of the election my attention was called to the fact that no tickets were struck off with "for or against license" on them. I told Mr. Haycock to go amongst the saloon-men of the town and get up a collection and have a large number of tickets struck off with the words "For license" on them; I also went to the office to see that it was properly done; afterwards I found out that they were destroying the tickets in the houses at which they were left and defacing them; I told him that probably we had better have more of them struck off; do not know whether he did or not.

Q. What time did you get last tickets from Press office on that day?—A. About 4 o'clock; don't remember the exact time; they were destroying them, and we would send and get them.

C. G. Newman, proprietor of the Press office, and another of the persons mentioned by Mr. Robinson in connection with the printing of the tickets, testifies as follows:

Q. I notice in the testimony of Dan. M. Robinson, taken for the contestant, that he alludes to the printing of some tickets, on the day of the Congressional election, at your office; if you remember anything of the printing of said tickets, state it fully.—A. There were no tickets printed in my office after noon on the day of the Congressional election, that I know of, whatever; I have no recollection of giving Robinson any ticket to print at all. Mr. S. C. Ryan was the foreman of the office, and I always

turn over work that I receive to him, if present; if not present, I turn it over to the foreman of the news department, Mr. Arthur Murray, who has been with me for many years. But Mr. Ryan was at the office during the working hours of the day mentioned. Colonel Haycock did give me an order for some tickets with Slemons's name on, and at the bottom were the words "For license." He paid me for the tickets, stating at the same time that the managers who had had Slemons's tickets printed had overlooked the liquor-license question, and he, being a liquor dealer, felt interested in getting the voters to vote for license.

And further deponent saith not.

An examination of the entire testimony on this point, when submitted to the well-known rules for testing its weight and conclusiveness, clearly shows that not the slightest pretense exists in support of the theory contended for by contestant. The object in having the tickets printed is fully and satisfactorily explained; the time they were printed is also shown, and any suspicion that might be created by the testimony of Mr. Robinson that they were printed or used for an illegal purpose, is, we think, dispelled by the testimony of Haycock, Portis, and Newman. Besides, if a suspicion really existed that any ballot-box contained more votes for contestee than were actually polled, the ballots and poll-books, so far as the testimony shows, are still in existence, in charge of the proper officers; and an examination and comparison would have readily tested the truth or falsity of contestant's charge. The weight and force of the testimony given, we think, imposed that duty upon contestant. It will be observed contestant claims he was the choice of the Republican and Greenback parties, and received their full vote in the district, and particularly in the county of Jefferson, and, therefore, there must have been a fraudulent counting of the ballots, as the returns show he received a smaller vote than that conceded to the Republican party alone; and hence it is insisted he should be credited with the full Republican vote cast at previous elections. It is hardly necessary to say that no warrant exists for such a claim, and if, under any circumstances, it could be maintained, a brief examination of the facts elicited by the testimony will show his claim to be based on false premises.

All the witnesses agree that a very small vote was polled throughout the district, some estimating it between one-half and two-thirds of a full vote; that great apathy existed among the people; no extended canvass had been made; few public meetings held; no excitement or enthusiasm prevailed; that the previous county election in Jefferson County had its influence in the Congressional election, many Republicans having supported contestee who voted with the Democrats at the previous election, in support of the compromise ticket. Contestant was not the nominee of the Republican party, and, while canvassing, denounced both the Republican and Democratic parties, asserting that he belonged to neither, and while witnesses for contestant declare their belief that he received the vote of the Republican party, not one hazarded the assertion that a full vote was cast, but venture the opinion that upon a full vote, a fair election, and a proper count, contestant would receive the Republican vote, while, on the other hand, it is in evidence, by both Democrats and Republicans, that many prominent and leading Republicans, their names being given, warmly supported contestee; that contestant was obnoxious to a considerable portion of the Republican party.

It seems hardly probable from these facts, and the additional one as testified to, that the Democratic majority in the district at a previous election for governor, upon a test vote, was about 2,500 (page 95), that contestant would receive the full strength of a party he openly denounced, and to which he denied allegiance.

We append the testimony of H. King White (pages 96 and 97) upon this point, as it is more full than that of any other witness, and clearly states the causes which contributed to the result:

Q. Taking the Republican strength as a basis of Jefferson County, is there any reason why John M. Bradley should claim the usual Republican majority there?—A. There was none; on the contrary, a great many of the prominent Republican leaders of the county were openly pronounced against him.

Q. Taking the certified vote for Congress at that election, showing 1,570 for Bradley and 1,189 for Slemmons in that county, would you deduce from it any evidence whatever, from your knowledge of Bradley's strength and influence, of any unfairness in favor of Slemmons as against Bradley?—A. I would not; and I ascribe that result to the following reasons: The only approach to anything like a full vote in any of the voting precincts in the county was at the Vaugine Township boxes. The falling off at the other precincts was more than an average of one-half as compared with the September election, and almost entirely of Republican votes, Slemmons receiving at nearly every precinct the full party vote, and in many instances more than the party vote. I calculate that there were 2,000 Republican votes in the county not offered on that day at all. Never since the separation of the State and Congressional elections has the Republican party polled its full strength in a Congressional election; Clayton did not receive it in 1874, nor Snyder in 1876.

Q. From your knowledge of the strength of Bradley and Slemmons in the district, what do you think of the vote as returned, as shown by certified abstract of same herewith submitted and marked Exhibit "A" for reference and for the purpose of your deposition?

(This question is objected to, as the abstract is not the best evidence.)

A. From this abstract shown me, Bradley polled nearer the Republican vote in Hempstead and Ouachita Counties; Slemmons polled the fullest Democratic vote in Jefferson and Nevada Counties; the largest falling off in the Republican vote was in Chicot, Lincoln, and Jefferson; the largest proportionate increase for Bradley was in Dorsey County; the largest loss for him was in Chicot County. The only gain that Slemmons makes in any county is in Jefferson. This abstract shows, except in the instances referred to in this answer, a large falling off in every county. There is not a county where its full vote was polled in that election.

Q. Can you account for that falling off? If so, do so.—A. I account for that falling off for two reasons; first, that in September, two months preceding, there had been a canvass for State and county officers, in which the people had been worked up to the highest pitch of excitement on account of local questions, and when the reaction set in, and in the absence of an active and vigorous canvass by either candidate for Congress, that interest was not awakened to get out the full vote; second, it was a general belief among Democrats that the district was Democratic and that Slemmons would be elected; third, there was no Republican candidate in the field; and, fourth, there was no Greenback party in the district.

Q. Measuring the returns from your knowledge of the district, what unfairness do they indicate?—A. There are no indications of unfairness in my mind, for the reason that two years preceding this election, in the contest between Snyder and Slemmons, when the issue was fairly made between the Democratic and Republican parties, Snyder polling about 2,300 majority in Jefferson County and upwards of 1,000 in Chicot, Slemmons still received about 1,300 majority in the district, and if the falling off of the Republican vote in these two counties last mentioned is considered, it is more than Slemmons's increased majority two years ago.

Q. In Lincoln County, do you know any particular reason why Bradley did not reach the Republican strength of that county?—A. I know that J. J. Julyn, the county clerk, and C. W. Preddy, the county judge, two prominent and leading Republicans in that county, openly espoused the cause of Slemmons, and on the day of the election were at Auburn precinct, the largest Republican polling place in that county, and canvassed and actively exerted themselves to secure the Republicans' votes for him at that box.

Q. Can you name any leading Republicans in Jefferson County who supported Slemmons?—A. I think I can.

Q. Please do so.—A. Among the white Republican leaders, George Haycock, the postmaster; John M. Clayton, sheriff; G. W. Prigmore, circuit court clerk; A. E. Beasley, deputy county clerk; Frank Silverman, ex-county judge; J. F. Vaughn, ex-sheriff. Among the colored ones there were so many that I remember but few. Down at Victoria Township, where I was on that day, there Taylor Daniels, Aaron Anderson, William Marsh, William Connelly, Jordan Dickinson, Henry Jones, and a number of others. In Vaugine Township I was not present on the day of the election, but the evening before that day I heard an expression of sentiment amongst prominent colored men, and was informed that they advocated the election of Slemmons on the election day. Prominent among those I might mention D. A. Robinson, Zach Simson, Louis Martin, R. A. Daurau, John Ellis, D. F. Tillman, and many others.

Complaint is also made by contestant that the vote of Melton Township was not counted.

The testimony shows that a short time before sunset, the time fixed for closing the polls, one of the judges of the election, J. D. Currie, was threatened with an arrest by a United States deputy marshal unless the polls were then closed and the votes counted; that quite a number of colored men crowded around the polls, some with guns in their hands, and others having them stacked within a convenient distance, a guard being placed over them; that such was the demonstration the judges considered it unsafe to remain and accordingly left, the ballot-box having been thrown out to one of the colored men, a supervisor of the election for that precinct, which was afterwards returned to its place upon the table. After the judges had proceeded a short distance they concluded to return and endeavor to count the votes. Upon their return it was ascertained the deputy marshal had left, that the ballot-box was in the possession of the colored men, who asserted their intention of retaining it, and such was the excitement it was believed to be unsafe to remain longer, and the judges accordingly left. (Pages 85, 86, 88, and 89.) Mr. Nixon, one of the judges of the election at this precinct, estimates the vote cast at about 115.

There is no pretense that the election was an unfair one, or that the voters were intimidated, nor is there a particle of evidence connecting contestee or any of his friends with the transaction. The county clerk, Mr. Nivens (page 36), testifies that the ballot-box was brought to him by a United States deputy marshal securely locked, and still remains in that condition. It is not pretended that the ballot-box had been tampered with, and the vote could easily have been ascertained had the proper exertion been made. It also appears there were no returns from Barraque or Dunnington Townships, the inference from the testimony being that no election was held in either of those townships, and no reason is assigned for the failure to hold an election. It will not, however, be seriously contended that the result of the election can in any manner be affected by the failure of these townships to hold an election.

In Washington Township it appears from the evidence that an election was held, and that the judges, while on their way with the ballot-box to make return, were assaulted by masked men and the ballot-box was taken from them. It does not appear who those men were, nor what their party affiliations, nor can any presumption arise from the relative strength of the political parties to which, if to either party, those desperadoes belonged, as the testimony shows (page 192) that the strength of the Democratic and Republican parties in that precinct was about equal. Hence neither party can be held responsible for the disgraceful and criminal act, nor can the result be in any way affected.

We come now to the consideration of the most important point made by contestant in his brief and argument, the circulation of false and fraudulent posters in Chicot County a few days before the election, announcing John A. Williams, a well-known Republican, as the candidate of that party for Congress in that district. The object was evidently to deceive the Republican party in that county, and thus induce that vote to be cast for Williams, and to lessen the vote it was supposed would otherwise have been cast for contestant. It was a shallow device, dishonorable to those engaged in the transaction, and deserves the emphatic condemnation of every friend of free and fair elections; and if the testimony was sufficient to establish the complicity of contestee with an act so dishonorable, and we were satisfied that its effect upon the voters produced a result different from that which otherwise would have occurred, we

would not hesitate to recommend that the election be set aside and new one ordered.

The evidence upon this point is substantially that there were printed at the office of the Pine Bluff Press, which supported contestee in the Congressional canvass, a number of posters or circulars, without authority, announcing John A. Williams as the Republican candidate for Congress, and urging the party to rally to his support.

These posters were left at the Planters' House, in the city of Pine Bluff (at which house contestee was at the time a guest), for a friend and supporter of contestee. On the Wednesday before the election contestee and one Dawson, who circulated these posters in Chicot County, were seen conversing together at the depot a few minutes prior to the departure of Dawson on his mission. The subject of their conversation is not revealed by the evidence, nor is there sufficient to connect the contestee with the transaction. Samuel C. Ryan, foreman in the Pine Bluff Press office, states his belief that H. King White directed the printing of the posters, and that the original was in his handwriting (page 30). Mr. White states (page 100) that he has no recollection of ordering the printing of the posters; that he never saw but one copy and that was at the Press office; that he does not know who wrote the original; did not see the same delivered to the printer, and does not remember any conversation with contestee upon the subject; but had an indistinct recollection of having had a conversation with Dawson, but cannot give the details.

It is contended by contestant that the conclusion is irresistible, from the evidence, that contestee was a party to this dishonorable transaction. The evidence of Mr. White, above recited, must, we think, satisfy every reasonable mind that contestee and White had no conversation together upon the subject; and if contestee knew of the printing and circulation of the posters it is to be inferred alone from the fact that he was a guest at the Planters' House when the circulars were delivered there from the printing-office, and the further fact that he and Dawson were seen conversing together at the depot just prior to the departure of the latter on his way to Chicot County. We submit that, in the absence of direct testimony implicating contestee, the circumstances detailed are not sufficient weight to warrant the inference contestant draws from them.

But let us pursue the subject a little farther and learn, if we can, what was the probable effect produced upon the voters of Chicot County, when in doing this we shall embrace the testimony taken out of time, and the admission of which objection was made, remarking, however, that notwithstanding contestee, in his oral argument before the committee waived, as far as he was able to do, all objection to its consideration, the people of the district have interests and rights which cannot be taken from them. If, as is so strongly contended, contestant was the acknowledged candidate of the Republican party in the entire district and the cordial support of the party had been decided upon, it seems hardly probable that so transparent a trick could have had any decided influence in perplexing or confusing any considerable number of voters, especially as the announcement of Williams as a candidate of the party emanated from a single individual, unauthorized by any position he held to speak for the party, and as, in the only county where the announcement was made, it was at once denounced as a fraud, and as two contestants' witnesses state it was so used as to advance the interest of contestant.

We assume, so far as the testimony shows, that Dawson alone gave currency to the announcement, as he circulated the posters, which we

sided by a letter written by him to one Holland, and which is as follows:

LUNA LANDING, ARK.,
November 2, 1878.

DEAR HOLLAND: On the eve of the election the Republicans have concluded to bring out a candidate. The circulars and tickets will speak for themselves, I send you. I am sick and will take boat to-night for Arkapolis, otherwise I most certainly should have come to the village. Do all you can. We think Bradley has made split enough by proper work to get our men in. Regards to all. Do all you can. Would like to have seen you. Come up soon as possible.

Yours, as ever,

RICH. H. DAWSON.

John E. Bradley, a son of contestant, the first witness introduced on this subject, and to whose testimony the objection above mentioned does not apply, says he found the printed posters in Arkapolis, Chicot County, and was advised they were circulated by Dawson; that he arrived in the county on Wednesday night, and left the next Sunday morning before the election; that he distributed tickets on behalf of his father; and that he denied the validity of the posters while in Chicot County. It therefore appears the antidote so quickly followed the poison that no serious effect could have been produced.

H. W. Graves, a witness for contestant, says he was in the southern part of Chicot County most remote from Pine Bluff on the day of the election (where it is to be presumed the injury to contestant would have been the greatest), and that the posters and printed tickets with the name of Williams upon them led to confusion, and were the means of keeping a great many Republicans from the polls; that no votes were there cast for Williams, and witness asserted his belief that the posters announcing Williams as a candidate were a fraud (page 43), and were so generally regarded by the Republicans. On cross-examination he states a very small vote was polled at the election on November 5, 1878; that Bradley in July made the only speech in Chicot County, nor were there any public gatherings in regard to this special purpose (the Congressional election); that the Republicans of Chicot County are mostly of the laboring class, and from August to November are mostly confined to their crops. He further states that the use he made of these posters had an influence for Bradley.

George T. Wilkinson, a witness for contestant, states there was a marked indifference by the people generally of Chicot County as to the result of the late Congressional election up to a late hour, and that the increased interest at this late hour was shown by the Republicans.

S. H. Holland testifies also that the posters had a tendency to confuse the voters, and prevented quite a number from voting.

This evidence fails to satisfy us that the circulation of the posters produced any considerable effect upon the voters; certainly not to the extent of preventing any great number from voting. The general apathy and indifference to the result, testified to by contestant's witnesses, clearly and satisfactorily indicate the reason for the smallness of the vote, and, in connection with the testimony of other witnesses heretofore alluded to, afford the only satisfactory answer to the question why contestant, claiming to be the Republican candidate, received so cold a support from the party. The total vote received by Williams was cast for him in Chicot County and reached the number of *ninety*.

Suppose we assume (which is by no means certain) that the ninety votes cast for Williams would otherwise have been given to contestant. We have no means of computing the number who were so much con-

refused as to prevent them from voting for contestant, as the testimony affords no light whatever upon the subject. It is entirely a matter of conjecture, a mere guess, as liable to be wrong as right, and in view of this state of the evidence contestant insists it is the duty of the committee to find that the confusion of the voters was so great as to prevent 1,265 Republicans from voting for him who would otherwise have done so, which, added to the vote he claims he should have received in Jefferson and Hempstead Counties, would be sufficient to overcome the majority returned for contestee; not only that, but to count for him the number of votes that were never cast sufficient for the purpose, and to accord to him the seat now occupied by the sitting member.

We now come to the testimony taken in Hempstead County, which it will be remembered is subject to the same objection heretofore mentioned. The evidence, however, shows (pages 57, 58) that the judges of the election were not present at polling place No. 2 in Ozan Township and that the voters there assembled erroneously concluded there could be no election; that 350 voters, with tickets for contestant in their hands expressed a desire to vote for him; that at Saline precinct the polls were not opened for the same reasons; that 204 voters, having tickets for contestant, expressed their wish to vote for him, making 554 votes which contestant contends should be counted for him.

We concede there may be circumstances under which a legal vote being deprived of the privilege of casting his ballot, it may nevertheless be counted. Judge McCrary, in his work on elections, page 99, says "To require each voter belonging to a class of excluded voters to go through the form of presenting his ballot, and having a separate ruling in each case, would be an idle and useless formality." But the present class is not of the character entitling their votes to be counted. The voters assembled at the two precincts, in the absence of the judges of election, as has been shown, could have elected judges and proceeded with the election. It was, partially at least, their own neglect, arising perhaps from an ignorance of the law, which prevented an election being held in each of the precincts named.

No fraud, intimidation, or other misconduct being alleged or shown preventing the holding an election, if the voters in the absence of the regularly appointed judges fail to avail themselves of the privileges the law affords, their votes cannot be counted.

Assuming the testimony taken in Chicot and Hempstead Counties and to which objection was made, to have been properly taken, we now propose to make a statement of the vote, as liberal as can possibly be claimed for contestant upon consideration of the entire testimony, and upon the premises laid down by him; not, however, conceding the correctness of his premises or the conclusions deducible therefrom.

Suppose, then, we concede to contestant 700 additional votes in Vaino Township, which is a large estimate even upon his own assumption, and also the entire vote cast in Melton Township and not counted without conceding a single vote to contestee, and also 600 additional votes in Chicot County, including the 90 votes cast for Williams, assuming that they would have been cast for contestant except for the circulation of the false posters announcing Williams as the candidate of the Republican party, and also the 554 votes in Hempstead County at the two precincts in Saline and Ozan Townships, where no election was held, assuming that 554 legal voters at those precincts would have voted for contestant, and that not a vote would have been cast for contestee, and the result will be found still showing a considerable majority for contestee, as will appear from the following statement:

Majority returned for contestee.....	2,827
Additional votes for contestant in Vaugine.....	700
Additional votes for contestant in Melton.....	115
Additional votes for contestant in Chicot County.....	600
Additional votes for contestant in Hempstead County.....	554
	1,969
Majority still remaining for contestee.....	858

No calculation we can make, based upon the testimony, even admitting that to which objection is made, will warrant the conclusion that contestant is entitled to the seat now occupied by the sitting member.

We therefore are of the opinion that the contestee is entitled to retain the seat he occupies, and recommend the passage of the following resolution:

Resolved, That William F. Slemons is entitled to retain the seat he now occupies as Representative from the second Congressional district in the State of Arkansas in the Forty-sixth Congress.

All of which is respectfully submitted.

SAM'L L. SAWYER.
WILLIAM M. SPRINGER.
WALPOLE G. COLERICK.
F. E. BELTZHOVER.
ALVAH A. CLARK.
EMORY SPEER.
E. C. PHISTER.
R. F. ARMFIELD.
VAN H. MANNING.

We concur in the conclusions of law above set forth, and also in the conclusion as to the right of the sitting member to hold his seat.

W. H. CALKINS.
E. OVERTON, JR.
W. A. FIELD.
J. WARREN KEIFER.
JOHN H. CAMP.

Mr. WEAVER submitted the following as the

VIEWS OF A MINORITY:

FEBRUARY 24, 1880.

I cannot agree with the report made by the majority of the committee, for the following reasons:

First. The evidence taken in Chicot and Hempstead Counties was taken after the forty days from the service of contestee's answer on the contestant had expired, but no protest was entered or made by contestee, so far as it appears in the record, until the depositions had all been taken, signed, and certified. Contestee appeared and cross-examined the witnesses without making objection. He entered his objection just as the depositions were ready to be sealed and transmitted. I submit to the House whether contestee, by his appearance and cross-examination, without objection, did not waive all right to object to the testimony on this ground.

Second. I submit to the House whether, upon the whole evidence, it does not appear that there were such fraudulent practices, intimidations,

and criminal means resorted to by the contestee's political friends as to render uncertain and doubtful the result of said election; and whether right, justice, a due regard for law, order, and the purity of the ballot-box, as well as for the protection of the people of said district, do not demand that the seat of contestee be declared vacant and a new election held in conformity to law. If the House shall take this view of the case, I respectfully submit the following resolution for its adoption:

Resolved, That the seat now occupied by William F. Slemons as a member of Congress from the second Congressional district of the State of Arkansas in the Forty-sixth Congress be, and the same hereby is, declared vacant.

Respectfully submitted.

J. B. WEAVER.

HORATIO BISBEE, JR., vs. NOBLE A. HULL.

SECOND CONGRESSIONAL DISTRICT OF FLORIDA.

In this case the State canvassing board rejected the vote of a county on the ground that one precinct had made no returns.

Held, That the vote of a poll having been ascertained indisputably it must be counted. In a contest before the House of Representatives the vote shown by an unassailed return cannot be rejected on the ground of a failure of some other body to canvass it.

Where duly certified copies of returns, signed by all the officers of the election, perfect in form, clear and explicit in the statement of votes cast, are put in evidence, they are by law the primary legal evidence of the votes cast, and unless assailed are conclusive.

certificate of election made in obedience to a writ of mandamus has the same legal force as in any other case.

The House adopted the report January 22, 1881.

JANUARY 18, 1881.—Mr. KEIFER, from the Committee on Elections, submitted the following

REPORT:

on Elections, to whom was referred the contested-election case of Horatio Bisbee, jr., against Noble A. Hull, of the second Congressional district of the State of Florida, respectfully report:

That the second Congressional district of the State of Florida is composed of seventeen counties; that in the original canvass by the State board of canvassers of the votes cast therein in the year 1878 for Representative to the Forty-sixth Congress, the following result appeared:

	Hull.	Bisbee.
Volusia County.....	367	243
Saint John's County.....	532	346
Suwannee County.....	540	563
Putnam County.....	616	622
Orange County.....	823	213
Nassau County.....	622	769
Marion County.....	1,008	1,190
Hamilton County.....	609	418
Duval County.....	1,130	2,214
Columbia County.....	908	803
Clay County.....	207	112
Bradford County.....	697	923
Baker County.....	256	153
Dade County.....	47	14
Archer County.....	1,178	1,745
Total.....	9,640	9,623

The majority for Mr. Hull was thus found to be 12. The first canvass was made on December 21, 1878, by the State canvassing board, composed of the secretary of state, the comptroller, and the attorney general of the State of Florida; and thereupon, on the same day, the governor of that State issued to Noble A. Hull a certificate of election. (Record, page 500.) By virtue of this certificate Mr. Hull was admitted to a seat in the House.

It will be noted that in this first canvass the vote of only fifteen of the seventeen counties was canvassed; that the vote of Brevard and Madison Counties was not canvassed.

The State canvassing board met again on January 8, 1879, and, in obedience to the mandate of the supreme court of Florida, again canvassed the vote of the second district of Florida, and included in the canvass the returned vote from the county of Madison, no return being before the board from poll No. 4 of Madison County.

The vote thus canvassed from Madison County was, Hull 938, and Bisbee 1,151; majority for Bisbee, 213. The result of this second canvass showed Mr. Bisbee's majority to be 201, the State board of canvassers having found and certified Mr. Hull's total vote to be 10,578, and Mr. Bisbee's total vote 10,779. (Record, pages 218-220.)

The opinion of the supreme court of Florida, pronounced by the chief justice, on the question of canvassing the vote of the county of Madison, will be found in the record, page 221.

On this final canvass Mr. Bisbee applied to the governor of Florida for a certificate of his election, which was referred by the governor to the attorney-general of the State, who, on January 10, 1879, gave his opinion to the governor, favoring in most emphatic language Mr. Bisbee's right to such certificate. (Record, page 228.) Mr. Bisbee's application was, however, refused.

The vote of Brevard County was never canvassed by the State canvassing board, for reasons assigned in writing by the board on December 23, 1878. (Record, page 220.)

Parties and their attorneys agree that poll No. 4, Madison County, was never returned to the county canvassing board, and hence it was never canvassed; and it is in like manner agreed that the true vote cast at this poll was, Hull 129, and Bisbee 186; majority for Mr. Bisbee, 57. (Contestee's brief, page 14; and Record, pages 25, 27, 28.)

It is also proved, as admitted, that there was no return of the votes cast at Cow Creek precinct, Alachua County, and that the true vote cast there was, Hull 24, Bisbee 2; Hull's majority, 22. (Record, page 242; and contestant's brief in reply, page 4.)

It is also an admitted fact in the case that at Long Swamp or Whiteville poll, Marion County, 93 Democratic ballots were fraudulently substituted for a like number of Republican ballots, thereby making a difference in the vote as canvassed of 186 votes against Mr. Bisbee.

The contestee (brief, page 37) agrees that this fraud was committed, and that at this precinct "134 votes should be counted for contestant and 41 for contestee."

The vote returned and canvassed was 134 for contestee and 41 for contestant.

An agreed statement fixes the vote of Brevard County at 116 for Hull and 41 for Bisbee. (Record, page 487.)

Assuming that the vote should be counted as found and agreed upon, as stated above, the following result is reached:

	Hull.	Bisbee.
Original canvass of State board.....	9,640	9,622
Madison County as canvassed by State board, by order of supreme court.....	938	1,151
Poll No. 4 Madison County.....	126	186
Add for Long Swamp or Whiteville poll, Marion County.....		186
Cow Creek poll, Alachua County.....	24	2
Brevard County as per agreement.....	116	41
Total.....	10,844	11,192
Majority for Horatio Bisbee, jr.....		348

Subject to a slight deduction to be made for reasons hereinafter given, our committee find Mr. Bisbee's majority to be 350. The grounds for this finding will be very briefly stated.

MADISON COUNTY.

Without deciding the question of the jurisdiction of the supreme court to issue a mandamus to compel the State canvassing board to canvass the vote of Madison County, the committee, on the returns and testimony now before it, find that the board had no legal right to reject the returned vote of the county in their first canvass, and that Mr. Bisbee is now entitled to have such vote counted for him.

The testimony discloses no objection to the returns, and none is known to exist. The returned vote of Madison County was rejected by the State canvassing board on the sole ground that one of the precincts (poll No. 4) had made no returns.

No case can be found where in a contest before the House of Representatives the vote shown by an unassailed return has been rejected on the ground of a failure of some other body to canvass it.

The vote of poll No. 4 having been ascertained indisputably, it must of course be counted.

The contestee in his brief also urges certain special objections to the vote of four voting precincts of Madison County being counted, but there is nothing in his answer to base these objections upon, and the evidence does not sustain them.

The contestant stoutly insists that there should be counted for him 82 votes not cast at a regular poll or returned as required by law, but which were cast for him at a supplemental poll in district No. 1 of Madison County.

It seems to be shown that this number of persons did not get in their votes at this polling-place, for the alleged want of time for the judges to receive them. The committee does not think, under the proofs, that these votes can be counted, whatever the rule of law may be in a proper case.

Long Swamp and Cow Creek polls.

No further remark is necessary to be made as to the vote of these two precincts in Marion and Alachua Counties. The fraud in the former and the omission of the vote of the latter are not only shown by the proof, but both are admitted facts in the case.

BREVARD COUNTY.

While it is true that the contestant insists that the vote of this county should now be wholly excluded, as it was by the State canvassing board, in view of the agreement signed by the parties, and also on account of the unsatisfactory character of the testimony, the committee conclude that the vote of this county should be counted, and as fixed in said agreement. (Record, page 487.)

CONTESTEE'S CASE.

The contestee objects to counting the votes in certain precincts not already considered.

ALACHUA COUNTY.

Objection is made to counting the vote of three precincts in Alachua County.

The names of and votes returned from the three polls in this county

objected to are as follows, according to duly certified copies of the returns put in evidence by the contestee himself:

	Hull.	Bisbee.
Arredonda poll, (Record, page 487).....	66	225
Gainesville poll, (Record, page 492).....	234	394
Dudley's Store poll, (Record, page 494).....	57	278
Total.....	357	897

As already stated, duly certified copies of these returns were put in evidence by the *contestee*; they are signed by all the officers of the election; they are perfect in form, clear and explicit in the statement of votes cast, and have all been adjudged by the unanimous opinion of the supreme court of Florida, in a case before it, to be good and valid returns of the election at these polls. (17 Florida Reports, page 17.)

They are by law the primary legal evidence of the votes cast, and unless assailed are conclusive.

The counsel for contestee, in their brief, have not assailed these returns, nor sought to impeach them upon any ground whatever.

They argue that they should not be counted *simply because* the county canvassing board, in their first count, did not count them, and that the supreme court, under whose orders they were canvassed, had not jurisdiction to compel the board to canvass them. In answer to this it is sufficient to say that the returns, being unassailed, are conclusive evidence before this committee; and it is our duty to count them, no matter whether the supreme court of Florida had or had not jurisdiction to order them counted. The assault here made is not upon these returns, but upon the jurisdiction of the court, which we are not called upon to maintain or defend. We therefore overrule this objection to these three polls, and hold that the votes returned from them must be counted.

There is nothing in the testimony which in the least seeks to impeach the regularity of these returns.

And a certificate of election made in obedience to a writ of mandamus has the same legal force as in any other case. (McCrory on Elections, sections 335, 345.)

Besides, the county canvassing board of Alachua County were expressly prohibited by statute from rejecting these returns, and the supreme court of Florida so held. The statute of Florida prescribing the duty of county canvassing boards reads as follows:

Such canvass shall be solely and entirely from the returns of the precinct inspectors in each election district as filed by them with the county judge and clerk of the circuit court, respectively, and in no case shall the board of county canvassers change or vary in any manner the number of votes cast for the candidates respectively at any of the polling-places or precincts in the county, as shown by the returns of the inspectors of such polling-places or precincts.

No language could be employed to more completely prohibit a canvassing board from rejecting a return; and consequently the county canvassing board had not jurisdiction to exclude those precinct returns, and their action was null and void, and the supreme court of Florida so held.

In his answer contestee avers that at Arredonda poll ballots for contestant were marked by the election officers, and that the act of marking the ballots rendered them illegal, and intimidated voters from voting for contestee. (Record, page 6.)

Counsel for contestee, in their brief, have not alluded to this objection, and it is therefore fair to presume that in their judgment it could not be sustained. In their oral argument it was suggested that if the con-

Contestee was injured—that is, lost votes by reason of the marking of the ballots—the returns should be rejected, while they admitted that the marking of the ballots did not, *per se*, vitiate them. We are unable to find any evidence in the record that contestee was injured by numbering the ballots. He received the highest vote that any of the local candidates on his ticket received at that poll.

Two of the election officers were sworn, and their testimony is in substance that they numbered the ballots to correspond with the numbers opposite the names on the poll-list, *at the request of a United States supervisor*, because the latter thought it was necessary to make the election legal, and they did not know to the contrary, and without any improper motives. (Record, pages 231–3; record, pages 235–6.)

Counsel for contestee admitted before the committee, in argument, that the ballots were not marked with the design or purpose of affecting the fairness of the election to the injury of contestee. It is evident that such was not their intention. It does not appear that it was generally known among the electors that the ballots were being marked, nor is there any evidence this contestee lost a single vote by it. Only one voter is called as a witness (except the inspectors) to prove that the numbering of the ballots influenced his vote, and he testifies that it did not influence his vote. (Testimony of Aaron Huey, record, pages 483–4.)

It can scarcely be claimed that the evidence is sufficient to prove that the contestee was injured by the numbering of the ballots. On the other hand, the return shows that contestant ran behind his local ticket 31 votes at this poll (record, page 488); and Inspector Tucker, a Democrat, and sheriff of the county, testified that contestant received less votes than the local ticket. (Record, page 233.)

We therefore conclude that the contestant has as much cause to complain of the numbering of the ballots as the contestee.

The same objection is made to one poll in Orange County by contestant, and testimony was adduced to sustain it. But we think the testimony insufficient to prove that contestant was injured, if any person, by the marking of the ballots at this poll. (Record, pages 471, 609, 610, 612.)

This disposes of Alachua County.

EIGHTEEN SCATTERING VOTES.

Of the 18 scattering votes, to wit, 2 in Duval, 3 in Putman, 8 in Baker, 2 in Columbia, and 3 in Suwannee, which it is claimed should be deducted from the contestant's vote, the committee conclude, without stating the reasons at length, that 11 of these votes, to wit, 8 in Baker County and 3 in Suwannee County, should be deducted from the contestant's vote, and that the remainder should be counted.

These 11 votes are rejected on the ground that they were cast by non-residents, or non-registered voters.

Deducting the 11 votes from the 350 majority of Horatio Bisbee, jr., already found by the committee, reduces his majority to 339, which the committee finds, from the whole case, to be his majority.

The committee, in accordance with its findings, recommend for adoption by the House the following resolutions:

(1) *Resolved*, That, Noble A. Hull is not entitled to retain his seat as member of the Forty-sixth Congress of the United States as a Representative of the second Congressional district of the State of Florida.

(2) *Resolved*, That Horatio Bisbee, jr., is entitled to a seat as a member of the Forty-sixth Congress as Representative of the second Congressional district of the State of Florida.

JAMES McCABE vs. GODLOVE S. ORTH.

NINTH CONGRESSIONAL DISTRICT OF INDIANA.

New notice of contest. The committee, on showing of contestant, adopted a resolution granting further time in which to serve notice of contest and to proceed to take testimony. This resolution was not reported to the House in time to be of any avail, and subsequently the committee recommended that contestant have leave to withdraw his papers.

The House adopted the report February 15, 1881.

FEBRUARY 15, 1881.—Mr. CALKINS, from the Committee on Elections —, submitted the following

REPORT:

The Committee on Elections, to whom were referred the papers in the contested election-case of James McCabe vs. Godlove S. Orth, from the ninth Congressional district of Indiana, having had the same under consideration, beg leave to submit the following report:

Your committee, to whom was referred the contest in this case, report the following facts to the House:

Mr. Orth was returned elected by the election officers of the various counties comprising said district, receiving, according to their returns, 15,608 votes, and Mr. McCabe, his principal opponent at the same election, receiving, according to their returns, 15,510 votes.

On the 1st day of November, 1878, Mr. Orth received his certificate in due form from Hon. James D. Williams, then governor of Indiana. Within thirty days thereafter, and on the 12th day of November, 1878, Mr. McCabe served a notice of contest upon Mr. Orth, specifying, as it is alleged, the grounds of contest particularly, therein. This notice never came into the possession of your committee.

On the 5th day of December thereafter it is alleged that Mr. Orth fully answered each ground and specification of contest and served the same on that day on Mr. McCabe.

It is alleged by Mr. McCabe in a memorial presented to your committee, duly verified by him, that he did not take any testimony to support the several allegations in his notice of contest during the time allowed by law, for the reason, among others, that there was a contest pending between other contestants, which was in process of trial before the proper tribunal in the county of Montgomery, which would, and which did, develop substantially the evidence relied upon by him to overturn the declared result in the canvass of the votes in the said ninth district. He also alleges that his little boy was quite sick after that, and subsequently died, and that his presence was necessary at the bedside of his dying son. He further alleges in his memorial that as early as February, 1879, he discovered new evidence which he alleges tended to support an allegation of bribery by the friends of Mr. Orth, which

affected 150 voters who voted for Mr. Orth, and claimed that the establishment of this fact would set aside the majority returned for Mr. Orth, and clearly establish his right to a seat in this Congress. This petition or memorial was presented to your committee on the 10th day of June, 1879. There were two other affidavits subsequently filed by Mr. McCabe, signed by Mr. Dobbler and Mr. Paterson, in which affidavits each of the affiants testified that, on information and belief, facts tending to establish the bribery aforesaid might be elicited if time were given to take depositions.

In answer to this memorial, supported by the affidavits of Mr. McCabe and the two witnesses aforesaid, Mr. Orth promptly filed his own affidavit with your committee, denying generally the specifications in Mr. McCabe's memorial and affidavit so far as it affected his right to a seat in Congress, and specifically denying any connection with, or knowledge of, the bribery alleged by Mr. McCabe. Numerous affidavits are also filed in support of Mr. Orth's claim.

An issue being thus made, your committee were called upon to decide whether under the circumstances additional time should be given the contestant to take testimony and the contestee to rebut, when it was decided, on the 23d day of March, 1880, to grant time, and the following resolution was adopted:

Resolved, That James McCabe, contesting the right of the Hon. Godlove S. Orth to a seat in this House as a Representative from the ninth Congressional district of the State of Indiana, be, and he is hereby, authorized to serve upon the said Orth within ten days after the passage of this resolution a particular statement of the grounds of said contest, and that the said Orth be, and he is hereby, required to serve upon the said McCabe his answer thereto in twenty days thereafter, and that both parties be authorized and required to proceed within ten days after the adjournment of this session of Congress to take evidence in the case, in the manner and subject to all provisions of law now in force applicable to the taking of evidence in contested-election cases, the same as if the contestant had heretofore proceeded in time to take evidence in support of his claim to the seat.

By some inadvertence this resolution was never reported to the House, and the House consequently never acted upon it.

No testimony having been taken during the time allowed by law, and the resolution not having reached the House, whereby testimony might be taken under the order of the House, the case again came up at a meeting of the committee at this session of Congress, during last December. Your committee took the case up for consideration, and it being deemed unnecessary to report the aforesaid resolution to the House for action, because there did not remain sufficient time for the taking and certifying of testimony, or for the action of the committee of the House during the remaining time of this Congress, your committee reconsidered its former action, and, on the 11th day of January, 1881, passed the following resolution:

Resolved, That in view of the short time remaining before the adjournment, and the improbability of taking evidence under the statute, the resolution heretofore passed, March 23, 1880, in reference to the contest in the case of McCabe vs. Orth, be, and is hereby, rescinded, and the contest be, and is hereby, discontinued.

In view, therefore, of all the circumstances, your committee recommend the passage of the following resolution:

Resolved, That the contestant, James McCabe, contesting the right of the Hon. Godlove S. Orth, from the ninth Congressional district of Indiana, to a seat in the Forty-sixth Congress, have leave to withdraw his papers in said contest, and that the Hon. Godlove S. Orth's title to his seat in the said Congress be, and the same hereby is, confirmed.

**J. C. HOLMES AND JOHN J. WILSON—IOWA CONTEST
ELECTION.**

**IN THE MATTER OF J. C. HOLMES, CLAIMING A SEAT FROM THE
EIGHTH CONGRESSIONAL DISTRICT OF IOWA.**

**IN THE MATTER OF JOHN J. WILSON, CLAIMING A SEAT FROM THE
NINTH CONGRESSIONAL DISTRICT OF IOWA.**

Holmes and Wilson presented petitions to the House in which they set up that they were elected Representatives in Congress from the eighth and ninth districts of Iowa, respectively, at an election held November 5, 1878, by a majority of the legal votes cast at such election, and that certificates of such election have been forwarded to the Clerk of the House of Representatives. The petition does not state that any other person has been declared elected at that or any other election; that a certificate of election had been granted to anybody by the governor of the State of Iowa, and they do not ask that the election of any other person be inquired into.

Held, That in the absence of any evidence of action on the part of the authorities of the State in making proclamation and giving notice of the election, and canvassing the votes after the election, and in the absence of evidence that it was generally understood that an election for Representative in Congress was to be held that day, it is impossible to hold that either Mr. Holmes or Mr. Wilson had been elected.

The House adopted the majority report January 31, 1881.

**DECEMBER 21, 1880.—Mr. FIELD, from the Committee on Elections,
submitted the following**

R E P O R T :

In the matter of J. C. Holmes, claiming a seat from the eighth Congressional district of the State of Iowa; and

In the matter of John J. Wilson, claiming a seat from the ninth Congressional district of the State of Iowa.

The petition of J. C. Holmes, found on page 1 of the printed papers, sets forth his claim substantially as follows:

1st. That on the 5th day of November, 1878, being the Tuesday next after the first Monday of November, he was duly elected a Representative in Congress from the eighth Congressional district of Iowa by a majority of the legal votes cast at such election.

2d. That certificates of said election have been forwarded to the Clerk of the House of Representatives. The prayer is:

Your petitioner therefore respectfully requests your honorable body to take such action as will give him his legal rights as Representative from the eighth Congressional district of the said State of Iowa in the Forty-sixth Congress, to which he is entitled by virtue of an election held in conformity to the laws of the United States on the 5th of November, A. D. 1878.

The petition does not state that any other person has been declared elected at that or any other election, or that any other election had been held, or that a certificate of election had been granted to anybody by the governor of the State of Iowa, and the prayer of the petition does not ask that the election of any other person may be inquired into.

The petition does not state that any rights of Holmes as a citizen or voter in Iowa have been violated, or that as a citizen or voter he has any complaint to make or any relief to ask.

The general language of the petition and papers in the case of John J. Wilson is the same as in Holmes's case; the petition of Mr. Wilson, however, also states that the Clerk of the House of Representatives enrolled the names of those persons who had the certificates of the governor which were issued to the persons who were chosen at an election held in the month of October; the prayer of this petition is the same as in the case of Holmes.

It is a fact, however, of which perhaps the House may take notice, that Mr. William F. Sapp and Mr. Cyrus C. Carpenter were elected Representatives in Congress respectively from the eighth and ninth Congressional districts of the State of Iowa, at a general election held on the 8th day of October, 1878, being the second Tuesday of October; that they received the certificate of the governor, were sworn in, and now hold their seats.

No person is made party respondent to the petitions; the petitions have never been served on any one, and no notice of the petitions, so far as appears, was ever given to any one by the petitioners. The papers in Holmes's case seem to have been referred to the Committee on Elections April 5, 1879 (Record, April 6, page 27), having been transmitted by the Clerk to the Speaker, and by the Speaker laid before the House, and by the House referred to the Committee on Elections.

When this reference was made nothing was said about the certificate of the sitting member, and in the schedule of papers transmitted no reference in terms was made to such certificate.

This reference was made after the discussion in the House on the memorial of John J. Wilson (Record of March 23, 1879, pages 1, 2, 3, and 4), in which the certificate of the sitting member was excluded from the resolution of reference, and the resolution in that case was adopted in form as follows:

Resolved, That the memorial of John J. Wilson and all the papers in the hands of the Clerk relating to the election of Representative in Congress for the ninth Congressional district of Iowa, on the 5th of November, 1878, be referred to the Committee on Elections when appointed.

The papers which were actually transmitted to the committee and are printed contain the original certificates of Mr. Sapp for the eighth district and of Mr. Carpenter for the ninth district, as elected at a general election held on the second Tuesday in October.

It is not perhaps material to consider whether these certificates are properly before the committee or not; they are not any part of the papers of the petitioners. As no authority in either case was given to the committee to take testimony, the sole authority of the committee rests on these references, on the rules of the House, and on the laws of the United States. There is no law, and no practice of the Committee on Elections, as we understand it, authorizing the use by the committee of *ex parte* affidavits to determine questions of facts in deciding the merits of an election case.

The power of the House to judge of the elections, returns, and quali-

fications of its members is ample, and it can proceed in its own way; a committee of the House has such power as is given it.

The importance of election cases demands that the testimony should be taken on notice to all persons interested, with the right on their part to cross-examine witnesses and to exhibit testimony in reply, so far as their rights may be affected by the inquiry.

This may be done under or after the analogy of the statute relating to contested elections, or by summoning witnesses before the committee, or in any other manner the House may direct.

None of the certificates or affidavits found in the papers in a judicial court would prove themselves or be judicially recognized except the certificates of the sitting members.

The committee sent notice of the pendency of these petitions to the members in Congress from the State of Iowa, and some of them appeared specially, without acknowledging by their appearance that their rights could be determined under these petitions. The undersigned agree with the remainder of the committee that chapter 8 of the Revised Statutes of the United States, relating to contested elections, has no direct application to a contest between persons claiming under elections held on different days, and could only be made applicable by a resolution of the House authorizing such parties to proceed after the analogy of the statute and fixing in the resolution a time from which the first thirty days should begin to run.

The undersigned think that the words "such election" in the third line of section 105 of the Revised Statutes mean an election contested, and a person claiming to be elected on a subsequent day might not be elected until more than thirty days after the result of the first election had been determined, and might not be able under the statute to give any notice at all; but they think that the provisions of that chapter or some analogous provisions ought in general to be made applicable to any contest in which the rights of sitting members are involved, or else that the Committee on Elections should be authorized to summon persons and take testimony, with notice to the sitting members, and perhaps, in a case like this, to the State of Iowa, to appear and by testimony and arguments be heard. The petitions in these cases should not, therefore, be dismissed merely because they do not conform to the statutes.

The agreement of parties has sometimes been received as to disputed questions of fact, but it has always been held that this should be done with great caution, as these are not merely contests between the parties, but the rights of the people of the district and of the State and of the people of the United States are involved and cannot be agreed away.

In these cases no testimony has been taken by the committee; there are no parties and no agreement of parties. Certain facts have been stated in argument for and against the cases of the petitioners, and have been conceded in argument by counsel, but the undersigned do not feel at liberty to consider them as agreed facts.

It was suggested to the counsel of the petitioners that if they proposed to prove any other facts than those set forth in their papers, they should state them; but there was no intimation that they desired to offer evidence of any other facts than those alleged in the papers.

In determining what should be done with the petitions, the undersigned were of the opinion that the affidavits and certificates accompanying the petitions should be regarded as offers of proofs; that is statements by the petitioners of the facts which they propose to prove.

committee should consider whether, if all these statements taken to be true, the petitions could be maintained; that not, it would not be worth while to ask this House for a like testimony on the subject, or to take any other action on the petitions. The statements of facts in the case of far as it seems necessary to state them for the proper use of the House, are these:

Election held at Turner's school-house, in Macon Township, received 61 votes, being all the votes cast. The polls were opened by two clerks and three judges of election, and one of the clerks acted as township clerk. The judges of election deposited the poll-book with the county auditor of Taylor County. The judges and clerks were sworn.

The inference is that one of the clerks and all the judges of election were regularly appointed clerks and judges.

Election held at Centre school-house, in Buchanan Township, received 37 votes, being all the votes cast.

In the affidavit of Wilson, page 4, the number of votes is printed 38. The poll-book was returned to the auditor of Page County, and the poll-book was annexed to the papers as Exhibit A. The oaths of the judges of election were set out, and the inference is that none of the clerks and judges were regularly appointed clerk or judge. The supervisors resolved at a meeting of the board to canvass the votes (pp. 6, 7).

Election held in Siam, at the store-room of Albert Dyche, Polk County, the polls were opened by two clerks and three judges of election, who were sworn. Holmes received 37 votes and Chapman received 1 vote, being all the votes cast (pp. 4, 5, 14, 15). The inference is that none of the clerks and judges of election was the regularly appointed clerk or judge. There is no statement that any poll-book was deposited to the county auditor, but there is a statement that poll-book "Exhibit C" appears to be in the same condition as on the day the election was sealed up.

Election held in Nebraska Township, Page County, at the house occupied by R. A. Miller for a drug store, Holmes received 28 votes, Chapman received 6 votes, W. F. Sapp received 2 votes, being all, 37 votes, being all the votes cast. The clerks and judges of election were duly sworn and the ballot-box and poll-book deposited. The inference is that none of the clerks or judges of election were regularly appointed clerk or judge.

It is said that the inference is that none of the clerks or judges of election were regularly appointed clerk or judge, except in the case of one clerk in Buchanan Township, Taylor County. This statement has been made and is not stated that they were, and because the oaths seem to have been administered on the 5th day of November, 1878, on which the constitution nor the laws of Iowa provide for the regular appointment of any such officers.

It is said that a city or incorporated town has three trustees, each year, at the general election in October, each trustee for three years, and these trustees are judges of election in each ward where they reside; and the clerks are the township clerks, and appointed by them. (Section 606, Code of Iowa, 1873.)

It is said that if the judges do not attend the election the electors present may appoint them, and if the clerks do not attend the judges may appoint them. The oaths seem to have been administered on the day on which the election was held, it has been inferred that the clerks and

judges of election, except one clerk, were not the regularly appointed clerks or judges, but were appointed on the day of election in November.

The protest of Holmes addressed to the Clerk of the House protests against William F. Sapp being recognized as legally elected on the 8th day of October, 1878, and against his being placed on the rolls, and asks that Holmes's name may be placed on the rolls as legally elected on the 5th day of November, 1878.

The result is, in the case of Holmes, that the papers, if taken to be true statements, show that in these four townships certain voters got together and went through the forms of an election for Representative in Congress; that in all 171 votes were cast, of which Holmes received 162, Sapp 2, and Chapman 6, and there was one blank; and that these votes were never canvassed by any State officers and no certificate of election issued. In the Congressional Directory, which refers to the election held in October, Sapp is put down as receiving 15,343 votes, against 7,453 votes for Keatley, Democrat, and 7,760 votes for Hicks, National, in all 30,556 votes.

It does not appear that the voters of this Representative district understood generally that an election was to be held on the 5th day of November, being the Tuesday next after the first Monday of November, for Representative in Congress, or that any attempt would be made by anybody to hold such an election or that any person had notice that any such election would be held, except the persons voting.

It does not appear that the governor issued his proclamation for an such election, which by section 577 of the code of Iowa he is required to issue thirty days before any general election, "designating all the offices to be filled by the votes of the electors of the State, or by those of any Congressional, legislative, or judicial district, and transmit copy thereof to the sheriff of each county."

It does not appear that the sheriff gave "at least ten days' notice" thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county, or if there be no such paper, by posting such a copy in at least five of the most public places in the county as required by section 578 of the code.

It does not appear that any registry of voters was established, that any of the regularly appointed officers, except one township clerk, took any part in this election, or that the board of supervisors of the county canvassed the returns and made abstracts thereof, as provided in section 635 of the code of Iowa, or that any abstracts thereof were forwarded to the secretary of state or filed by the county auditor (section 637 of code), or that any canvass was made by the executive council (sections 651, 652, code), or that any certificate of election was issued under the seal of the State (section 653 of code). So far as appears, this might have been an election held by a few persons in only four townships, without any knowledge on the part of anybody except themselves that any attempt to hold an election would be made, at least without any recognition at all by the authorities of the State.

It was stated in argument that Mr. Holmes had his ballots secretly printed in Saint Louis, Mo., and that the election was in fact a secret one to nearly all the electors of the district, but as the committee have not been authorized to take testimony, the undersigned have considered this as hearsay, and have not regarded it.

The special facts distinguishing the case of Wilson from that of Holmes are the number of precincts in which votes were cast and the number of votes cast. There are also contained in the papers of Wilson the opinion of the attorney-general of the State, of Mr. James S. Mc-

Dill, of Mr. S. J. Kirkwood, of Mr. John F. Dillon, of Mr. George D. Perkins, and of Mr. Reuben Noble upon the question whether the second Tuesday in October or the Tuesday next after the first Monday in November was the legal day to hold an election for Representatives in Congress in Iowa. These opinions are all to the effect that the second Tuesday in October is the only legal day for such an election.

The facts in Wilson's case deemed by the undersigned material to be stated for the understanding of the House, if the statements in his papers are taken to be true, are these:

At an election held on Call street, in Heckart's building, Algona Township, Kossuth County, John J. Wilson received 83 votes, Cyrus C. Carpenter received 95 votes, in all 178 votes, being all the votes cast.

At an election held at the Conlon school-house in Great Oak Township, Palo Alto County, John J. Wilson received 13 votes, being all the votes cast.

At an election held at the school-house in Rutland Township, Humboldt County, John J. Wilson received 9 votes, being all the votes cast.

At an election held at Dakota City, in Dakota Township, Humboldt County, John J. Wilson received 32 votes, Cyrus C. Carpenter received 1 vote, in all 33 votes, being all the votes cast.

At an election held at Willow Glen school-house, Avery Township, Humboldt County, John J. Wilson received 19 votes, being all the votes cast.

At an election held at school-house No. 3 in Irvington Township, Kossuth County, John J. Wilson received 15 votes, being all the votes cast.

At an election held at Walker school-house, in Lott's Creek Township, in Kossuth County, John J. Wilson received 10 votes, being all the votes cast.

At an election held in the school-house in district No. 4, in Cresco Township, Kossuth County, John J. Wilson received 25 votes.

At an election held at the school-house in Walnut Township, Palo Alto County, John J. Wilson received 9 votes.

At an election held at school-house in West Bend Township, in Palo Alto County, John J. Wilson received 20 votes, being all the votes cast.

At an election at Lott's Creek, in Humboldt County, John J. Wilson received 13 votes, being all the votes cast.

At an election held at the school-house in district No. 2, Vernon Township, Humboldt County, John J. Wilson received 12 votes, C. C. Carpenter 1 vote, in all 13 votes, being all the votes cast.

The foregoing statement purports to be certified to by the precinct judges of elections and attested by the clerks.

There is a certificate of the county auditor of Kossuth County that some packages purporting to be the returns from Cresco, Algona, Lott's Creek, and Irvington Townships, all in Kossuth County, were filed in his office, that none of said packages has been opened, and that the board of supervisors have not yet canvassed the returns.

There are two affidavits of the votes cast in Cresco Township and Irvington Township, respectively, that one copy of the returns in these townships was filed with the township clerk and one with the county auditor, and one mailed to Henry Pike.

There is a certificate of the county auditor of Palo Alto County that envelopes with the returns of West Bend, Walnut, and Great Oak Townships were filed with him, and the board of canvassers refused to recognize the claim to have the votes of said election canvassed.

There is an affidavit of Mr. Al. M. Adams that the county auditor of Humboldt County declined to sign the annexed certificate or to attach the county seal thereto, that he does not deny that the facts therein stated are true, and that he gives as a reason for not signing and sealing it that he does not think that the elections were legal, and will not have anything to do with the matter in any way.

The unsigned certificate annexed to the papers is to the effect that envelopes purporting to contain the returns from Avery, Rutland, Humboldt, Dakota, and Vernon Townships were filed with the auditor and never have been opened, and that the records of the board of supervisors do not show that any action has been taken thereon; and there are the opinions of gentlemen upon the legal day of election which have been hereinbefore stated.

These are in substance all the papers in the case of Wilson. There is nothing to show that the judges or clerks of elections were the regularly appointed judges or clerks.

If the statements in these papers are taken to be true there were votes cast in twelve townships on the 5th of November, 1878, for Representative in Congress to the number of 357, of which Wilson received 260 and Carpenter 97. In the Congressional Directory, which refers to the October election, Carpenter is put down as receiving 16,489 votes against 1,202 for W. H. Brown, Democrat, and 12,338 votes for L. Q. Hoggatt, National; in all 30,029 votes.

There is the same absence of any evidence of action on the part of the authorities of the State in making proclamation and giving notice of the election and canvassing the votes cast after the elections as in Holmes's case, and there is no evidence whatever that it was generally understood that an election for Representative in Congress was to be held on the 5th day of November, or that any attempt was to be made to hold any election on that day, or that it was known to anybody except the persons voting that any such election was to be held. The papers do show that the governor of Iowa was advised by the persons named that such an election could lawfully be held only on the second Tuesday of October.

The undersigned think that it is impossible to hold on these alleged facts, if proved, that either Mr. Holmes or Mr. Wilson has been duly elected Representative in Congress, whether the Tuesday after the first Monday of November or the second Tuesday of October be the lawful day for such an election, and that there is no need of taking testimony in these cases, because the facts alleged, if proved, would not entitle either of these gentlemen to a seat, and that the committee should be discharged from any further consideration of these petitions; and that in coming to this conclusion it is not necessary to decide whether the authorities of the State were right or not in determining that the legal day of election was the 8th day of October, because if it be assumed to be true that the 5th day of November was the legal day of election, the election was not held under the sanction of the authorities of the State of Iowa, was not generally known so far as appears, and was not participated in by such numbers of the people of Iowa that on any ground this House would be justified in declaring Mr. Holmes or Mr. Wilson entitled to a seat.

These petitions, as has been said, cannot be considered as petitions of citizens or voters of Iowa asking that the whole election in Iowa for Representatives in Congress in October should be declared void.

They are not drawn with any such intention and pray no such relief. So far as appears, if Holmes and Wilson cannot be seated they are con-

tent, as citizens of Iowa, that the existing delegation of Iowa should retain their seats.

If resolutions should be offered in the usual form declaring either Mr. Holmes or Mr. Wilson entitled to a seat, the undersigned think that they should be decided in the negative, and if resolutions should be offered declaring Mr. Sapp and Mr. Carpenter entitled to their seats, that they should be decided in the affirmative, because nothing as yet has appeared to invalidate the title by which they now hold them; and that as a decision of the validity of the election of Messrs. Sapp and Carpenter, or perhaps of all the delegation from Iowa, is not necessary, in the opinion of the undersigned, in order to make a proper disposition of these petitions, a decision against them or against the whole delegation of Iowa should not be made without formal notice to the representatives of Iowa, and perhaps to the State of Iowa, and after taking testimony of such facts and circumstances surrounding the election on the second Tuesday of October as might properly be considered in construing the statutes and laws relating to the legality of an election on that day.

As other members of the committee have deemed it proper to express an opinion and to report on the legality of the election held on the second Tuesday of October, the undersigned, although not thinking that question necessarily involved in the matter before them, or that all the facts and circumstances pertinent to a decision have been established in a proper manner, deem it their duty to submit their views upon the question, so far as can be done from what appears in the papers, with some reference to the arguments.

This House will take notice that the Representatives from the State of Iowa now holding their seats were elected at a general election held on the 8th day of October. The certificates of Mr. Sapp and Mr. Carpenter so state.

The House, if it chooses, independently of the petitions, can take action upon that fact.

It was stated in argument before the committee that the governor or the State of Iowa, before the election in October, consulted the attorney-general of the State, the justices of the supreme court, the judge of the circuit court of the United States, and other lawyers of eminence upon the question whether the constitution of the State of Iowa would need amendment in order to change the day of election of State officers, that it might be determined whether Iowa was within section 6, chapter 130, of the acts of 1875 of the United States, and that the opinion of these gentlemen was almost unanimous that Iowa was within the exception created by that section. Some of these opinions appear in the papers in the Wilson case.

It was stated in argument that the leaders of all the political parties in the State consulted together and agreed that Iowa was within the exception created by that section, and that the election could legally be held only in October.

It was stated in argument that the governor, in good faith, after instructing himself in every proper way, decided that the election could only be held on the second Tuesday in October, and issued his proclamation accordingly; that the people of Iowa fully acquiesced in that decision; that the election held in accordance therewith was held without protest from anybody, and was one of the fullest and fairest elections ever held in that State.

That these facts are of very great significance in determining whether the action of the State authorities shall be sustained is evident, but the

undersigned doubt whether they are properly before them, although they have no reason to believe they are not true.

The *bona fide* interpretation of the constitution and laws of a State by the authorities of a State who are charged with the duty of interpreting its constitution and laws is certainly entitled to very great weight.

It was the duty of the governor to issue a proclamation thirty days before the day of election of Representatives in Congress.

If section 25 of the Revised Statutes of the United States applied to Iowa, then the day of election was the Tuesday next after the first Monday of November.

As Iowa had not changed its day of election since the passage of the act of Congress incorporated in section 25 of the Revised Statutes, if its constitution must be amended in order to effect "a change in the day of election of State officers in said State," then, by section 6, chapter 130, of the acts of 1875, the twenty-fifth section of the Revised Statutes of the United States did not apply to the State of Iowa.

By the statutes of the State of Iowa Representatives in Congress, except on the years of the Presidential election, must be elected at a general election to be held throughout the State on the second Tuesday of October.

Section 6, chapter 130, of the acts of the United States of 1875 is in these words:

SEC. 6. That section 25 of the Revised Statutes, prescribing the time for holding elections for Representatives in Congress, is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of election of State officers in said State.

It thus became the duty of the governor to determine the meaning of the constitution of Iowa in the particular mentioned, and this was done by him as the only authority in Iowa which, under the constitution and the laws of Iowa, had the right or was charged with the duty of determining it, and it was done in the performance of an official duty which could not be avoided.

It is the doctrine of the Supreme Court of the United States that decisions of the highest judicial court of a State upon the meaning of the State laws and constitution, when its decisions are uniform, are binding on that court.

The construction of the Constitution and laws of the United States belongs of course to the courts of the United States in any controversy before those courts; but in considering whether the laws and constitution of a State conflict with the laws and Constitution of the United States as construed by the courts of the United States, those courts take the laws and constitution of the State as construed by the courts of the State when their decisions are uniform.

The undersigned are not prepared to hold that the decision of the highest authority of a State upon the meaning of its constitution in reference to whether the day of the election of State officers is fixed by that constitution or not, so far as it is material in determining the legality of an election of Representatives in Congress, is absolutely binding upon this House.

In a report from the Committee on Elections, adopted by this House April 11, 1871, in the matter of the Tennessee election (Digest of Election Cases, compiled by J. M. Smith, p. 1), the committee say:

It is a well-established and most salutary rule that where the proper authorities of the State government have given a construction to their own constitution or statutes,

that construction will be followed by the Federal authorities. This rule is absolutely necessary to the harmonious working of our complex Government, State and national, and your committee are not disposed to be the first to depart from it.

We are not disposed to be the first to depart from it, and we certainly think that such a decision made in good faith and acquiesced in at the time by the people of the State, and followed by a full and fair election, should not be overthrown or questioned except for the gravest reasons, founded on an undoubting conviction that it was plainly an error, and that the error had worked some substantial injury.

Section 4, article 1, of the Constitution of the United States confers power on the *legislatures* of the States to prescribe the time of electing Representatives in Congress in the absence of any controlling regulations by Congress.

The provisions of the *constitution* of a State cannot take this power from the *legislature* of a State, and Congress cannot take from a State the right to fix either by its constitution or by its laws the day of electing State officers.

The object of section 6, chapter 130, of the acts of 1875 was to prevent compelling any State against the will of its legislature to have two elections on different days, one for Representatives in Congress and one for State officers, or else to change its constitution.

If the *legislature* of a State had a right under the constitution of the State to fix the day of election of State officers, it could if it saw fit fix the same day for the State election as that fixed by Congress for the election of Representatives in Congress by section 25 of the Revised Statutes, or it could of course fix a different day. But if the *constitution* of the State fixed a day of election of State officers, and that was a different day from the Tuesday next after the first Monday of November, the day fixed by the twenty fifth section of the Revised Statutes for the election of Representatives in Congress, then, except for section 6, chapter 130, of the acts of 1875, the State must have two elections, or be put to the trouble of amending its constitution.

This amendment of section 25 of the Revised Statutes enabled any State having such a constitution to have two elections or one, as the legislature of that State desired, because after the amendment the *legislature* of such a State had a right, under the Constitution of the United States, to fix any day for the election of Representatives in Congress its legislature saw fit.

The reason, then, of section 6, chapter 130, of the acts of 1875, as an amendment to the twenty-fifth section of the Revised Statutes, is equally applicable to a State whose constitution fixed the day of election of State officers as to a State whose constitution fixed the day of election of all State officers.

It was not the intention of Congress, either by this or any other legislation, to compel a State to hold its election for Representatives in Congress on the same day as that for the election of any State officers; whether the two elections should be held on the same day or on different days it meant to leave to the legislature of each State to determine.

Congress effected this intention by so amending section 25 of the Revised Statutes that it should not apply to a State whose constitution fixed a day for the State election, and by thus doing Congress left to the legislatures of all the States the power to make the day of election of Representatives in Congress and the day of election of State officers the same day or different days, as the legislature of each State might choose.

To say that section 6, chapter 130, of the acts of 1875 is applicable

only to a State whose constitution must be amended in order to effect a change in the day of election of every State officer, is against a proper construction of its language, as well as against the reason of the statute, and ignores the mischief it was designed to remedy.

The reason of this amendment might confine the meaning of the words "change in the day of election of State officers" to "State officers" elected by the people, excluding State officers elected by the legislature. It may also be that the words "day of the election of State officers" must be confined to the regularly recurring day of election, and could not be extended to include a day of election fixed in the constitution for filling unexpired terms. It is possible, too, that the words "day of the election" must be held to mean a day of an election throughout the whole State, although such an election might be held by districts or divisions, as the election of Representatives in Congress is held by districts.

From these considerations it seems evident that if there is a day of election by the people throughout the whole State fixed by the constitution of a State for the election of some of the State officers, and that day is other than the Tuesday next after the first Monday of November, then section 25 of the Revised Statutes is not applicable to such State.

The provisions of the constitution of the State of Iowa, adopted in the year 1857, and ever since in force, which bear most directly on this question, are the following, and they are given in the order in which they are found in the constitution:

ARTICLE THREE.

LEGISLATIVE DEPARTMENT.

SEC. 3. Members of the House of Representatives shall be chosen every second year by the qualified electors of their respective districts on the second Tuesday of October, except the years of the Presidential election, when the election shall be held on the Tuesday after the first Monday of November.

The term of office is two years.

SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as representatives. * * *

Senators are classified so that one-half, as near as may be, shall be elected every two years. In this article nothing is said of the *year* of the election.

ARTICLE FOUR.

EXECUTIVE DEPARTMENT.

SEC. 2. The governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly. * * *

He holds office for two years.

SEC. 3. There shall be a lieutenant-governor who shall hold his office two years and be elected at the same time with the governor. * * *

SEC. 10. When any office shall from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the general assembly or at the next election by the people.

SEC. 22. The secretary of the state, auditor of state, and treasurer of state shall be elected by the qualified electors and shall continue in office two years. * * *

There is nothing in this article about the *day* or *year* of the election.

ARTICLE FIVE.

JUDICIAL DEPARTMENT.

SEC. 3. The judges of the supreme court shall be elected by the qualified voters of the State. * * *

he term is four years.

C. 11. Judges of the supreme court and of district courts shall be chosen at the *general election*. * * *

this is the first place where the words "general election" are used.

C. 12. The general assembly shall provide by law for the election of an attorney-general by the people, whose term of office shall be two years. * * *

this is the first express provision that the general assembly shall make provisions by law for any election.

C. 13. The qualified electors of each judicial district shall at the time of electing a district judge elect a district attorney. * * *

the term is four years.

ARTICLE SEVEN.

EC. 5. But no such laws [laws in reference to the State contracting debts] shall have effect until at a *general election* it shall have been submitted to the people. * * *

ARTICLE NINE.

EDUCATION AND SCHOOLS.

A board of education is established, consisting of the lieutenant-governor and one member to be elected from each judicial district in the State.

C. 3. One member of said board shall be chosen by the qualified electors of said district and shall hold office for the term of four years. * * *

The board is classified so that one-half, as near may be, shall go out every two years.

ARTICLE TEN.

AMENDMENTS TO THE CONSTITUTION.

C. 3. At the *general election* to be held in the year one thousand eight hundred and eighty, and at each ten years thereafter, and also at such times as the general assembly may by law provide, the question of amending or revising the constitution shall be voted upon by the electors. * * *

ARTICLE ELEVEN.

MISCELLANEOUS.

C. 6. In all cases of elections to fill vacancies in offices occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office shall hold until the next *general election*, and until their successors are elected and qualified.

ARTICLE TWELVE.

SCHEDULE.

EC. 6. The first election under this constitution shall be held on the second Tuesday of October, in the year one thousand eight hundred and fifty-seven, at which time the electors of the State shall elect the governor and lieutenant-governor; there shall also be elected at such election the successors of such senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the House of representatives. * * *

EC. 7. The first election for secretary, auditor, and treasurer of State, attorney-general, *district judges*, members of the board of education, district attorney, members of Congress, and such State officers as shall be elected at the April election, in the year one thousand eight hundred and fifty-seven, except the superintendent of public instruction and such county officers as were elected at the August election, in the year one thousand eight hundred and fifty-six, except prosecuting attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight, provided the time for which any district judge or any other State or county officer was

elected at the April election, eighteen hundred and fifty-eight, shall not extend beyond the time for filling like offices at the October election, in the year one thousand eight hundred and fifty-eight.

SEC. 8. The first election for judges of the supreme court and such county officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year one thousand eight hundred and fifty-nine.

SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty-nine, at which time their successors shall be elected as may be prescribed by law.

This constitution was ratified by the people August 3, 1857. One object in establishing it, as appears by the records of the proceedings in the constitutional convention, was to do away with the two elections required by the constitution of 1846, in Presidential years.

In the year 1856, the year before the adoption of the present constitution, there had been held an election in April for township officers and district judges, an election in August for many other State and county officers and for members of Congress, and an election in November for Presidential electors. Until the schedule being article 12 of the constitution of 1857 is reached, there is nothing in the constitution itself indicating the year in which any of the elections would be held. The terms of office were two, four, and six years.

It is plain that there must be an election every two years, but until the schedule established it there was nothing to indicate on what year the first election under this constitution should be held. In the absence of the schedule, although there is no express provision that all the officers should be elected at the first election, yet the implication to be derived from section 3, article 3, in which a *day* of election is expressly fixed in reference to the members of the State house of representatives, and is fixed expressly on the Presidential year for the Tuesday next after the first Monday of November, would be that members of the house would be elected on the years of the Presidential election, and that that occurs on even-numbered years, and as the terms of members of that house are two years, the further inference from that section would be that the members of the house of representatives of the State were to be elected on the even-numbered years; and applying that to the other sections that have been cited, in the absence of the schedule, the inference would be that it was intended by the constitution to establish biennial general elections to be held on even numbered years, namely, on the years of the Presidential election, on the Tuesday next after the first Monday of November, and on other even-numbered years on the second Tuesday of October.

By the schedule it was determined, apparently for the first time, that there should be annual elections; that part of the State officers should be elected in the even-numbered years and part in the odd; and provision was made for fixing the year in which the first election for the different officers should be held; and this year being fixed, succeeding elections of these officers, except in the case of vacancies, followed, as of course, according to the respective lengths of the terms of office, which in every case were an even-number of years.

The words *general election* occurring in the constitution can only refer to an election held on the second Tuesday of October, except in the year of the Presidential election, and then on the Tuesday next after the first Monday in November, and in section 3, article 10, it is expressly provided that a *general election* shall be held in 1870, and in every tenth year thereafter which are even-numbered years.

An argument may be, perhaps, drawn in reference to the secretary of State, auditor of State, and treasurer of State from section 22, article 4, because no time for the election of these officers is therein expressed; that it was intended to leave the time of their election to the legislature; but there are no provisions in the constitution giving the legislature power to fix the time of the election of these officers, and in section 12 of article 5 the provision is that the general assembly may provide by law for the election of an attorney-general by the people, whose term of office shall be two years, &c.; and the argument is perhaps equally strong that if the people did intend by their constitution that the general assembly should provide by law for the election of secretary, auditor, and treasurer of the State, they would have said so in plain terms.

The powers which the people, by their constitution, confer upon the legislature are to be determined by a proper construction of the constitution itself, in the same manner as the regulations they have fixed for themselves by that constitution, or as the rights and powers they have reserved to themselves outside of the limits of that constitution.

Among the officers whose first election by section 7, of article 12, is fixed for the second Tuesday of October, 1858, and even-numbered year, not Presidential, are district judges, who by section 11, article 5, are to be chosen at the *general election*, and who held office for four years, who were therefore elected throughout the State on the second Tuesday of October, 1878.

In a constitution in some respects so inartificially drawn as this is, in which in reference to some officers the day of election is expressly fixed in the constitution, in reference to others it is provided that they are to be chosen at a *general election*, and to others that they are to be elected by the qualified voters, but no provision is expressly made for fixing the time of their election, and in reference to one of them, the attorney-general, there is an express provision that the general assembly may provide by law for his election, much weight must be given to the general scope and meaning of the instrument, and we think that it sufficiently appears in the constitution itself that the people of Iowa intended by their constitution that there should be *annual general elections* for State offices; that these elections should be held on all but Presidential years on the second Tuesday of October, and on those years on the Tuesday next after the first Monday of November; and that the intention of the sections in the schedule which have been cited was to establish the *years* of the first election of the different officers, so that some might be elected each year at the annual election, the officers under the old constitution continuing in office until their successors were elected, and that it was not meant by this schedule to permit the legislature to make a change in the *day* of the *general election* in any year after the first election.

The significance of the expression of time in these sections of the schedule is in the *year* and not the *day*. The same day is named for all the years. It is conceded that on the odd-numbered years after the first election there must be an election for members of the State house of representatives, of one-half of the senators, of governors, lieutenant-governors, and some of the judges of the supreme court, and that the election must be on the second Tuesday in October; but there is nothing in the constitution indicating that the provisions for the day of election were meant to be different on the even-numbered years not Presidential than on the odd-numbered years, or that the constitution meant to give the legislature any more control over the *day* of election in even-numbered years than in odd

The reason for fixing a different day on the years of the Presidential elections has been stated—namely, that the appointment of Presidential electors had been fixed by a statute of the United States for the Tuesday next after the first Monday of November; but at the time the adoption of this constitution there was no law of Congress prescribing the time of electing Representatives in Congress, and it is not to be presumed that, except on Presidential years, without any known reason whatever, it was intended that the elections in the successive years should be held on different days, or that the legislature should have the power to change the day on even-numbered years, but not on odd. It is not, of course, admitted that if the constitution of a State establishing biennial elections to be held at a certain time on the odd-numbered years, that then the twenty-fifth section of the Revised Statutes would be applicable to such a State. The late constitution of California, under which Representatives in Congress were elected in September in the odd-numbered years, illustrates this.

The general peculiarities of the constitution of 1857 are derived from that of 1846, and the particular provisions on which the decision turns are similar in both.

The constitution of 1846 provided as follows:

The members of the House of Representatives shall be chosen every second year, * * * on the first Monday of August, whose term of office shall continue two years from the general election.

In this section no year of election is mentioned.

Senators shall be chosen for the term of four years at the same time and place as Representatives. * * *

They are to be classified so that one-half are to be elected every two years.

A secretary of state, auditor of public accounts, and treasurer shall be elected by the qualified electors, who shall continue in office two years.

The judges of the supreme court were to be elected by the general assembly, and the district judges were to be elected by the qualified voters of the district in which they reside at the *township* election.

The qualified voters of each county shall at the *general election* elect one prosecuting attorney, and one clerk of the district court, who shall be resident, &c.

The term of office was two years.

There was no attorney-general by this constitution.

ARTICLE TWELVE.

SCHEDULE.

SEC. 5. The *first* general election under this constitution shall be held at such time as the governor of the Territory by proclamation may appoint within three months after its adoption for the election of a governor, two Representatives in the Congress of the United States (unless Congress shall provide for the election of one Representative), members of the general assembly, and one auditor, treasurer, and secretary of state. * * *

The office of clerk was not mentioned in this section, and no express provision was made in this constitution for the *year* of holding the general election except this, which in terms related only to the first general election.

Under this constitution the case of the State *vs.* Cadle arose (2 Green Reports, Iowa, p. 400), which was decided by the supreme court of Iowa in 1850. The case was an information in the nature of a *quo warranto* on the relation of Abraham Smalley against Richard Cadle. Smalley

claimed to have been elected clerk of the district court of the county of Muscatine on the first Monday of August, 1849. Cadle claimed to have been elected such clerk at a general election held on the first Monday of August, 1848. In the opinion it is stated that the first general election was fixed by proclamation of the governor of the Territory in October, 1846, and in another place in the opinion it is referred to as having been fixed in December, 1846.

At the first election the opinion states:

Several of the clerks were chosen without legal notice of the election. * * * Clerks were again elected on the first Monday in August, 1847, in some of the counties, and their election was declared to be legal by an act of the general assembly approved January 25, 1848, and by the same act subsequent elections were authorized to take place on the first Monday in August, 1849, and biennially thereafter.

If this act was constitutional, then Smalley, the relator, was entitled to the office by virtue of his election on the first Monday in August, 1849. Cadle's claim that he was duly elected on the first Monday of August, 1848, and still held the office, rested on these propositions: That, by the constitution, clerks were to be elected at the general election; that by the proper construction of the constitution, the general election was to take place every two years; that as the first general election had been fixed by the proclamation of the governor of the Territory for the year 1846, by a proper construction of the constitution the subsequent general elections must be held on the first Monday in August in the even-numbered years thereafter, and that therefore the act of the general assembly fixing the election of clerks on the odd-numbered years was unconstitutional and void.

The court sustained this view, and, among other things, say:

But the first general election, as we have seen, was to be at such time as the Territorial governor might appoint. That time having been fixed in December, 1846, it necessarily follows that the next general election, as biennially designated by the constitution, was on the first Monday of August, 1848, and would occur on the same Monday on each alternate year thereafter. * * * But independent of this consideration [speaking of the consideration of public convenience] and without going beyond the explicit language of the constitution, we have united in the conclusion that the general elections authorized by the constitution are biennial, and as the first general election took place in 1846, the second was held on the first Monday in August, 1848, and that under the constitution the only time appointed for the election of clerks and prosecuting attorney is at the general elections.

The court thus construed together the words "first Monday of August," being the day fixed for the election of State representatives, the words "general election," the fact that the first general election was fixed by the governor pursuant to the constitution for the year 1846, and the provision that the terms of office were two years or multiples of two years, and decided that by the constitution general elections were fixed by the constitution for the first Monday of August on the even-numbered years after the first election in 1846.

The reasoning of this opinion of the supreme court of Iowa is substantially that adopted in this report. A comparison of the two constitutions shows, as has been said, that much of the language of the constitution of 1857 was taken *verbatim* from that of 1846, and this comparison also accounts for the peculiar language in the constitution of 1857, in reference to the election of an attorney-general, an officer unknown to the constitution of 1846, and for the fact that until the schedule is reached the constitution of 1857 apparently contemplates biennial elections.

It was in view of this decision of the supreme court of Iowa, settling the construction to be given to the constitution of 1846, that the framers of the constitution of 1857 acted, and it would not occur to them that the same language in the new constitution as in the old, or similar language, would or could receive a different construction.

We are fortified in the conclusion we have reached by the proceedings in the constitutional convention of 1857.

In the debate on the third section of article three, relating to the election of members of the House of Representatives, which was, so far as the time of election is concerned, reported in its present form, Mr. Gillespie moved to amend by providing that the elections shall be held on the Tuesday next after the first Monday in November, and in explanation of the amendment said:

If we fix the time of the general election in order to have the terms of offices uniform we must fix the elections in October or in November; in the region of the State which I represent, our people are dissatisfied with the numerous elections we have, and there seems to be a general feeling manifested throughout in favor of placing the general election on the day of the Presidential election, so as to obviate the necessity and expense of having two elections.

Mr. Parvin, who was chairman of the committee on the legislative department, said:

I am not particular myself whether these elections are fixed in October or November, but so far as I have conversed with other persons on the subject they seem to think that the weather in November is too cold and blustering for elections to be held during that month, and that October would be a more suitable month.

It was thought by the committee that it was not necessary to have two elections so near every four years; to remedy that they made provision that on the years of the Presidential elections the general elections should be also on that day.

Mr. Palmer said:

I think this section is well enough as it is. It provides for elections being held on the second Tuesday in October of each year except the years of the Presidential election, when it is to be held on the day of that election. * * * As to the time, I think it is well enough to have the election in October when we can do so, and not have two elections coming so close together.

The objection is a very obvious one—to having two elections coming close together every four years, requiring voters to go, as the gentleman from Rattan has said—to go from twenty to twenty-five miles to the place of election, or lose their votes. * *

I am in favor of having our election on the second Tuesday in October in those years other than the years of the Presidential election, on account of the weather and the convenience of our farmers. (Constitutional Debates of Iowa, 1857, pp. 514, 515.)

Afterwards Mr. Young moved to strike out the exception of the years of the Presidential election, and said:

As the section now stands, we would have elections for three years in October and for one year in November.

Mr. Gillespie, in reference to this proposed amendment, said:

I do hope that the people of this State will not be burdened with two elections—one in October and one in November—every four years, and that the convention will adopt the report of the committee. If the report be adopted, I am perfectly satisfied, and I believe my people will be satisfied with it, because it accomplishes the great object we had in view—that is, to do away with the frequent elections that caused so much trouble and expense. (Pages 576, 577.)

In discussing the schedule (report on the schedule), in which the sections cited in this report were reported in their present form, Mr. Wilson said:

The committee have determined to so arrange the tickets as to divide the candidates in about equal proportions for the elections to be held upon different years. * * * By pursuing this course, we find that at the next October election we have

elect members of the general assembly and governor and lieutenant-governor. At the election in October, 1858, we have to elect the secretary, auditor, and treasurer of the State, attorney-general, district judges, district attorneys, members of Congress, board of education, and such State officers as will be elected at the next April election. This will give a ticket of about equal size to each year.

When we come to put in the first ticket for the judges of the supreme court to be elected in 1859, we will give tickets to each year of about equal proportions; for in the year we will have election of judges of the supreme court, members of the general assembly, governor and lieutenant-governor, and in the other we have the remainder of the State officers and our Congressmen. We concluded that that was the best division of the tickets, inasmuch as we were compelled to have elections in these different years. (Constitutional Debates, p. 1039.)

These statements seem to have been uncontradicted in the convention, and apparently it did not occur to the members of that body that they had not fixed a day of election for all the years, viz, on all but the years of the Presidential election, on the second Tuesday in October, and on those years on the Tuesday next after the first Monday in November.

We are, therefore, of opinion that the governor of Iowa adopted the right construction of the constitution of that State in deciding that it should fix the day of election of State officers (with the exception, perhaps, of the attorney-general), whether those State officers were to be elected on the odd or even numbered years, so that it would require a change in that constitution to elect State officers (who were required by the State constitution to be regularly elected by the people in the year 1878), on the Tuesday next after the first Monday in November, and that the election of Representatives in Congress, held in accordance with the laws of the State on the second Tuesday in October, 1878, was held on the day on which alone it could lawfully have been held.

In reaching this conclusion we disregard altogether the provision for the election of members of Congress found in section 7, article 12, of the constitution of Iowa. That provision may tend to show that it was the intention of the people of Iowa that members of Congress should be elected on the second Tuesday in October of the even-numbered years not Presidential, but the time of electing members of Congress cannot be prescribed by the *constitution* of a State, as against an *act* of the legislature of a State or an *act* of Congress, and the amendment to the twenty-fifth section of the Revised Statutes of the United States is confined to States whose constitutions fix the day of election of *State* officers in said State.

The only apparent exception has been in the constitutions which have been formed by Territories, and with which such Territories have been admitted into the Union as States: but this, if it be a valid exception, does not prove that Territories have the right by a constitution to fix the time for electing Representatives in Congress when they become States; but the authority of these provisions rests on the sanction and adoption of them by Congress in admitting such Territories as States, with constitutions containing such provisions.

In accordance with the views we have expressed of the manner in which these petitions should be disposed of, we recommend the passage of the following resolutions:

Resolved, That the petitioner, J. C. Holmes, in the matter of his petition asking to be admitted to a seat in the Forty-sixth Congress as a representative from the eighth Congressional district of the State of Iowa, have leave to withdraw his petition.

Resolved, That the petitioner, John J. Wilson, in the matter of his petition asking to be admitted to a seat in the Forty-sixth Congress as

a Representative from the ninth Congressional district of the State of Iowa, have leave to withdraw his petition.

W. A. FIELD.
J. WARREN KEIFER.
W. H. CALKINS.
JOHN H. CAMP.
J. B. WEAVER.
E. OVERTON, JR.

NOTE.—I do not agree to all the positions in the foregoing opinion, but do agree to the final result.

W. H. C.

We concur in the conclusion reached above, without fully indorsing the reasoning by which it is reached.

R. F. ARMFIELD.
VAN H. MANNING.
SAML. L. SAWYER.

I concur in the resolutions recommended by the foregoing report, and add the following summary of my reasons:

1. The right to contest the seat of a member of Congress and the manner in which that right shall be exercised are both clearly fixed by law. The members of the Iowa delegation in the Forty-sixth Congress were chosen by large majorities on the 8th day of October, 1878, which was the usual day for holding State elections, and was recognized as the proper day by the masses of the people. No one of the candidates who opposed the sitting members in that election has filed a notice of contest. There are, therefore, no contestants under the law. If that election was held on a day which was plainly in violation of the act of Congress, although no notice of contest was given, any citizen of the State could have protested against the seating of the delegation then chosen, and asked Congress to declare the election void. No such protest has been filed. The farce which was enacted on the 5th day of November, 1878, was not an election, and it would be wrong to dignify it as such, and still worse to recognize its validity in any respect. It clearly did not give the petitioners the status of contestants under the provisions of the act of Congress regulating contests, and their petitions cannot be construed as coming from citizens of Iowa, and asking that the election of October be declared void. There is nothing, therefore, in any aspect of the case, in these petitions to put Messrs. Sapp and Carpenter on their defense, or to invalidate in any way their right to their seats.

2. The question whether the constitution of the State of Iowa "must be amended in order to effect a change in the election of State officers," is one which it is the exclusive right of the State to decide. The persons to whom the constitution and laws of Iowa confide this decision have made it, and their determination is a finality, and is conclusive on all parties. The committee have not the right to review the decision.

F. E. BELTZHOVER.

JANUARY 13, 1881—Mr. COLERICK, from the Committee on Elections, submitted the following

VIEWS OF THE MINORITY:

3 undersigned, a member of the Committee on Elections, submits following minority report:

ree questions have been submitted for our consideration:

Has this committee jurisdiction to investigate the matters referred the memorials and papers presented to us, or do these cases come n, and therefore to be governed by, the provisions of the statute s United States relating to and regulating the mode of procedure es of contested elections of members of the House of Representa- ? If they do come within that statute, then we have no jurisdic- as it is conceded that its requirements have not been complied

Was the election that was held on the 8th day of October, 1878, in tate of Iowa for Representatives to Congress legal?

Was the election in the Eighth and Ninth Congressional Districts wa on the 5th day of November, 1878, for Representatives to Con- held on the day prescribed by law, and, if so, were the claimants elected such Representatives?

st. These cases are not contests between persons asserting con- ing claims to seats in Congress by virtue of the same election. They not rival candidates at the same election. The memorialists dis- any right to the seats in controversy under the election that was on the 8th day of October, 1878. They concede that if Representa- to Congress could have been legally voted for at the election then Messrs. Carpenter and Sapp are entitled to the seats now held by , as they each received at said election a majority of the votes cast , respective districts represented by them in Congress. They make arges of bribery, corruption, or fraudulent voting. They predicate right to the seats in dispute by virtue of elections held in said dis- for Representatives to Congress at a different time than that at h Messrs. Carpenter and Sapp were elected. The claimants do not ne or occupy the position of contestants, and therefore, in my on, the statute relating to contested elections is not applicable to cases.

e Constitution of the United States declares that "each house be the judge of the elections, returns, and qualifications of its members." (Article 1, section 5.) It is provided by Rule 77 of the e of Representatives, that "It shall be the duty of the Committee lections to examine and report upon the certificates of election, or credentials, of the members returned to serve in this House, and ve into their consideration all such petitions and other matters touch- lections and returns as shall or may be presented, or come into question, referred to them by the House." By virtue of this rule, which was ted as an efficient aid in executing the power so conferred by the titution, the House adopted resolutions by which the memorials of ainants in these cases, and "all papers in the hands of the Clerk of ouse relating to the elections of Representatives in Congress for the h and ninth districts of Iowa," were referred to this committee. r these resolutions, and the rule of the House above set forth, and rovision of the Constitution above cited, we are not merely vested ample power and complete jurisdiction to investigate these cases, ur duty to do so is rendered imperative.

Second. The Constitution of the United States declares that "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may *at any time* by law make or *alter* such regulations, except as to the places of choosing Senators." (Article 1, sec. 4.)

Under this provision of the Constitution the legislature of the State of Iowa was authorized and required to prescribe the time, place, and manner of holding elections in that State for Representatives in Congress, *subject* to the power of Congress to *alter at any time* such regulations. By virtue of this provision of the Constitution the legislature of that State did enact a law prescribing "the time, place, and manner" of holding elections for Representatives, and designated the second Tuesday in October as the time for the holding of said election. Subsequently, in February, 1872, Congress, exercising the power conferred upon it by the Constitution, *altered* the regulations so prescribed by the legislature of Iowa, as to the *time* designated for the holding of said election, by the following enactment:

The Tuesday after the first Monday in November, in the year 1876, is *established* as the day in each of the States and Territories for the election of Representatives and Delegates in the 45th Congress, and the Tuesday next after the first Monday in November in every second year thereafter is *established* as the day for the election in each of said States and Territories of Representatives and Delegates to the Congress commencing on the 4th day of March thereafter. (Section 25 of the Revised Statutes of the United States, 1878.)

Afterwards Congress modified said law, as follows:

That section 25 of the Revised Statutes, prescribing the time for the holding elections for representatives to Congress is hereby *modified* so as not to apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of the election of State officers in said State. (Section 6, chapter 130, acts of the second session of the Forty-third Congress approved March 3, 1875.)

The question presented to us is, Does the State of Iowa come within the exception named in said act, as modified? Must her constitution be amended "in order to effect a change in the day of the election of State officers in said State"?

The constitution of Iowa provides that—

The *first* election for secretary of state, auditor, and treasurer of state, attorney-general, district judges, members of the board of education, district attorneys, *members of Congress*, and such State officers as shall be elected at the April election in the year 1857, * * * shall be held on the second Tuesday of October, 1858. (Section 7, article 12.)

No provision exists in the constitution of Iowa for any *subsequent* election of the officers above named, and by reason thereof the duty of providing for *subsequent* elections of said officers devolved on the legislature of said State, who provided therefor, by enacting that said officers should be elected on the second Tuesday in October, and by virtue of this *legislative* enactment all *subsequent* elections of said officers have since then been held.

The attorney-general of Iowa, who, prior to October, 1878, was required by the governor of that State to examine the various provisions of the constitution of the State, and render an opinion as to the proper construction to be given thereto, so that it might be determined whether it was necessary to amend said constitution in order to effect a change in the day of the election of State officers in said State, says, in the opinion so rendered by him:

Our State constitution does not fix a day for the election of *all* State officers, but it *does* in its very terms fix the time for the election of governor and lieutenant-governor. Sections 3 and 5 of article 3 of our State constitution provide that the election

for members of the general assembly shall be on the second Tuesday in October; and sections 2 and 3 of article 4 provide that the governor and lieutenant-governor shall be elected at the same time and place as members of the general assembly.

The time, then, for the election of two State officers is definitely fixed by the terms of the constitution; but the time for the election of the other State officers is not fixed, either by direct terms or by necessary implication. Hence it was by the constitution left to the law-making power to fix the time of the election of *all other State officers*. The constitution, as to them, has only fixed the time for the *first election*. The fact that the constitution *by its terms* fixes the day of the election of members of the general assembly, governor, and lieutenant-governor, and only fixes the day for the "*first election*" of the other officers, indicates that after the "*first election*" the time for the election of the other officers was intended to be left to legislative control.

It will be noticed that, in addition to fixing the time for the election of governor and lieutenant-governor and members of the general assembly generally, the constitution also fixes the time for the first "*election*."

Thus it will be seen that the constitution fixes the day for the *first election* of *ALL* the officers named in it, and fixes the time for all subsequent elections of governor and lieutenant-governor and members of the general assembly. In the article relating to the executive, the time for the election of governor and lieutenant-governor is fixed; in the article relating to the legislative department, the time for the election of members of the general assembly is fixed; and the article relating to the judiciary provides that the judges shall be chosen at the "*general elections*," and article 12 provides for their "*first election*."

The "*general election*" must refer to some other time than the time mentioned as the day for the election of members of the general assembly, governor and lieutenant-governor. No "*general election*" is provided for by constitution; only the time for the election of two State officers and members of the general assembly is fixed. For some reason the constitutional convention thought it proper that the time of this election be fixed by constitutional provision, but left it to the wisdom of the general assembly to say whether that should be the day for the "*general election*."

I think that the construction so given to the constitution of Iowa by her attorney-general is the correct one.

The *first* and *all subsequent* elections for governor, lieutenant-governor, and members of the legislature were fixed and prescribed by the constitution, which provides "that the first election of these officers shall be held on the second Tuesday in October, 1859, and that like elections for said officers shall occur every two years thereafter," so that these officers are invariably elected in the *odd* numbered years, while Representatives to Congress, and all officers of the State, except the governor and lieutenant-governor, are elected, by *legislative enactment*, in the *even* numbered years; therefore, the objection that if it is held that the State of Iowa does not come within the exception of the act of Congress providing for the election of Representatives to Congress, as modified, that it will necessitate the holding of *two* elections in the same year in that State, does not exist.

It is also urged that, because the governor of that State decided that its constitution must be amended in order to elect Representatives to Congress on the Tuesday after the first Monday in November, the decision so rendered by him must be accepted as the true construction to be placed upon that instrument. While it is true that the Federal courts have repeatedly held that the construction placed upon the constitution and laws of the respective States by the latest utterances of the highest *judicial* tribunals thereof, will be respected and adopted by the Federal courts (7 Wallace, 523; 9 Wallace, 35; 14 Howard, 438; 23 Wallace, 108), yet they have never, so far as I am aware, extended the limits of this rule so as to embrace decisions rendered by any other than the *judicial* department of a State. It is not claimed that the *highest* or any other *judicial* tribunal of the State of Iowa has given a construction to these provisions of her constitution, and in the absence of such decision we are left unrestrained to place our own construction thereon. I do not think that the constitution of Iowa "must be amended in order to effect a change in the day of the election of the State officers in said

State, and, therefore, I believe that the election which was held in the State in October for Representatives to Congress was unauthorized and illegal.

Third. It follows, in my opinion, that the election should have been held on the 5th day of November, 1878, in accordance with the act of Congress, and under the regulations prescribed by the legislature of the State of Iowa fixing the places and manner of holding elections for such Representatives.

The Eighth Congressional district is composed of thirteen counties. At the election held on the 8th day of October, 1878, 30,556 votes were cast, while at the election held on the 5th day of November, 1878, the polls were opened in only *four* precincts of the district, and these were confined to *two* of the *thirteen* counties composing the district, and the entire vote cast at said election was 171.

The Ninth Congressional district embraces 26 counties, and the vote cast in the district for Representative to Congress, at the election held in October, 1878, was 38,029, while at the election held in November, 1878, for the same purpose, the polls were opened in only *twelve* precincts of the district, and these were located in *three* of the *twenty-six* counties constituting the district, and the entire vote cast at said election was 357.

The elections which occurred in said districts on the 5th day of November, 1878, were held in the absence of a proclamation of the governor of Iowa directing the holding of the same, and other formalities required by the statute of that State in relation to such elections were not complied with.

While, in my judgment, the failure of the governor to issue a proclamation, and the omission of other officers to perform their duties would not alone invalidate the election, as their neglect or refusal to comply with their duties should not result in depriving the people of the right to elect their officers at the time fixed by law for that purpose, yet it is quite evident, from the very small vote cast, that the voters of the district generally abstained from voting or taking any part whatever in said election, and it is fair to assume that the cause of their failure to do so is alone attributable to the fact that they believed that the election which had been held in October for Representatives to Congress was unauthorized by law and legal, and that said subsequent election was unauthorized and illegal, and by reason of this belief, so created, they failed to participate in said election and thereby the will of the people was not fairly or fully expressed at the election held in November, and therefore I do not think that the claimants who base their right to the seats in dispute under and by virtue of said election are entitled to the same.

If the views above expressed are correct it follows that the seats now occupied by Messrs. Sapp and Carpenter, respectively, as Representatives in Congress from the eighth and ninth Congressional districts of the State of Iowa, should be declared vacant, and accordingly I submit for the consideration of the House of Representatives the following resolutions:

Resolved, That neither J. C. Holmes nor William F. Sapp was lawfully elected to the Forty-sixth Congress from the eighth Congressional district of Iowa, nor is either of them entitled to a seat in said Congress.

Resolved, That neither John J. Wilson nor Cyrus C. Carpenter was lawfully elected to the Forty-sixth Congress from the ninth Congressional district of Iowa, nor is either of them entitled to a seat in said Congress.

WALPOLE G. COLERICK.

W. B. MERCHANT vs. JOSEPH H. ACKLEN.
ROBERT O. HERBERT vs. JOSEPH H. ACKLEN.

THIRD CONGRESSIONAL DISTRICT OF LOUISIANA.

In these cases the contestants failing to file briefs, as required by the rules of the committee, and on further notice failing to show cause why their cases should not be dismissed on account of such failure to file briefs as directed, the committee report in favor of contestee.

The House adopted the report March 1, 1881.

MARCH 1, 1881.—Mr. SPRINGER, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom were referred the contested election cases of W. B. Merchant vs. J. H. Acklen and Robert O. Herbert vs. J. H. Acklen, of the third Congressional district of the State of Louisiana, respectfully beg leave to report:

That the notices of contest and answers thereto were referred to the Committee on Elections and filed with the clerk of said committee on the 13th day of April, 1879. Evidence taken in the above cases was printed on the 15th day of January, 1880, and copies of the same were sent to the contestants, as required by the rules of the committee, by the clerk of said committee, with an official notice to prepare briefs within twenty days from the 25th day of January, 1880, to which no attention was given by said contestants.

On the 21st day of May, 1880, the clerk of the committee was directed by resolution to telegraph to Messrs. Merchant and Herbert to appear before the committee either in person or by attorney on the 29th day of May, 1880, and show cause why their cases should not be dismissed on account of the failure to file briefs as directed. No attention was given to these dispatches, and the parties neither appeared in person nor by attorneys, as notified. The said contestants were again notified by registered letters, on the 22d day of December, 1880, to appear before the Committee on Elections on the 11th day of January, 1881, and show cause why the cases should not be dismissed, and to this no reply was made.

We therefore respectfully recommend the adoption of the following resolution:

Resolved, That Joseph H. Acklen was duly elected and is entitled to seat in this House as a Representative in the Forty-sixth Congress from the third Congressional district of the State of Louisiana.

Resolved, That Robert O. Herbert and W. B. Merchant have leave to withdraw their papers of contest in this case.

All of which is respectfully submitted.

E. MOODY BOYNTON vs. GEORGE B. LORING.**SIXTH CONGRESSIONAL DISTRICT OF MASSACHUSETTS.**

Contestant charges that illegal votes were cast for contestee, and that a number of ballots failed to designate the office for which the candidate was designed. Contestee objected to the specifications of the grounds of contest because of their insufficiency.

Held: That had the objections been pressed and relied upon they would have been sustained, as a glance at the nature of contest discloses its utter insufficiency.

All persons who could not read and write, as required by the Constitution of Massachusetts, were not legal voters.

The presumption that sworn officers of the law have done their duty must obtain until the contrary clearly appears.

The public law of Massachusetts created the sixth Congressional district; and it appearing that there was no other "sixth district" in which any of the voters Groveland, lived except the "sixth Congressional district," nor was there a Representative office to be filled in any sixth district in which the town of Groveland was situated except the sixth Congressional district, ballots cast there reading "Representative, sixth district, George B. Loring, of Salem," clearly indicate writing the office for which the person voted for is designed.

The House adopted the majority report January 21, 1881.

DECEMBER 20, 1880.—Mr. CALKINS, from the Committee on Elections,
submitted the following

REPORT:

The notice of contest in this case is as follows:

NOTICE OF CONTEST.

NEWBURYPORT, December 2, 1878.

DEAR SIR: You are hereby notified of my intention to contest your election to the Forty-sixth Congress from the sixth Massachusetts Congressional district, for the following reasons, viz: To obtain a recount of votes cast for the candidates for said office as errors are believed to exist in the returns as made. It is known that ten legal votes cast in the town of Danvers were rejected in the count on pretense of having been challenged, but they should be counted. It is believed many votes in other places were excluded for the same reason. Names of persons were added to check-lists as their votes cast and counted in the precinct of which they were not residents. Others were excluded and not permitted to vote in the precinct of which they were residents and legal voters. Discrepancies are said to exist in the returns made by the returning officers of the representative district. It is reported on good authority that one man in the town of Amesbury voted twice, and both votes have been counted. A large number of votes were cast in several towns which failed to designate the office for which the candidate was designed. It is also reported that bribery and illegal interference were practiced. In some cities the returning officers did not register the votes in accordance with law, and it is probable many were registered who should not have been. The selectmen of Bradford, it is said, were illegally chosen, and were therefore unauthorized by law to issue a warrant for an election. In the town of Marblehead there were three ascertained fraudulent votes, and it is reported there were others which nevertheless have been included in the returns from that town. In the town of Essex there is said to be an error in the count, and in various towns there are said to be discrepancies; and as the law does not provide for a recount in towns, it is necessary

sary to contest your election in order to obtain a recount. Frauds of various kinds are reported to have been practiced in the last election, but the candidates are believed to be innocent of them. To prevent the recurrence of these evils, and to ascertain who is legally elected to the office of Representative to Congress from the sixth Massachusetts district, I shall claim the election to that office, and hereby notify you to that effect.

Respectfully,

EBEN MOODY BOYNTON.

The contestee, in his answer, objects and excepts to the specifications of the ground of contest because they are insufficient in law, and he especially reserves all right of exceptions for insufficiency. The answer closes with a general traverse of any and all facts set forth in the notice of contest. (See Record, pp. 1 and 2, for the notice of contest and the answer.)

Had the exceptions alleged against the notice of contest for insufficiency been pressed before the committee, the exceptions would no doubt have been sustained.

Section 105, Revised Statutes of the United States, is as follows :

SEC. 105. Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest. (Revised Statutes of the United States, p. 18.)

This section of the statute provides for the procedure in contests of this nature.

A glance at the notice of contest discloses its utter insufficiency and non-compliance with the section of the statute above set out. In the recent case of Duffy against Mason, decided by this House, the view we have taken is so clearly and ably set forth that we adopt the following provisions of that report as entirely applicable to the case at bar.

The report is as follows :

McCrary, in his Law of Elections, section 343, referring to this statute, says :

"A good deal of discussion has arisen as to what is to be understood by the words 'specify particularly the grounds on which he relies.' It is evident, however, that these words are not easily defined by any others. They are as plain and clear as any terms which we might employ to explain them. Cases have arisen and will again arise, giving rise to controversy as to whether a given allegation comes up to the requirement of this statute, and it must be for the House in each case to decide upon the case before it. It may be observed, however, that this statute should receive a reasonable construction, one that will carry out and not defeat its spirit and purpose. And perhaps the rule of construction which will prove safest as a guide in each case is this: A notice which is sufficiently specific to put the sitting member upon a proper defense and prevent any surprise being practiced upon him is good, but one which fails to do this is bad. (Wright *vs.* Fuller, 1 Bartlett, 152.)

"The Houses of Congress, when exercising their authority and jurisdiction to decide upon 'the election returns and qualifications' of members, are not bound by the technical rules which govern proceedings in courts of justice. Indeed, the statutes to be found among the acts of Congress regulating the mode of conducting an election contest in the House of Representatives are directory only, and are not and cannot be made mandatory under the Constitution. In practice these statutory regulations are often varied and sometimes wholly departed from. They are convenient as rules of practice and of course will be adhered to, unless the House in its discretion shall in a given case determine that the ends of justice require a different course of action. They constitute wholesome rules not to be departed from without cause." (*Ibid.*, section 349.)

While it is true that this statute should receive a liberal construction, yet it will not do to permit parties to disregard its provisions. The House, in sanctioning its violation in cases heretofore determined, has created precedents that are now frequently and pertinently cited to justify similar infractions. This practice, if tolerated, will finally result in the virtual abrogation of the statute. The only safe course to pursue is to require at least a substantial compliance with its provisions.

We think that the notice of contest in this case is clearly insufficient. It is too indefinite and uncertain in its allegations. "As was said in the case of *Bromberg vs. Haralson* (Smith's Digest of Election Cases, page 355)—

"It is too vague and uncertain to be good. The statute requires that the contestant in his notice 'shall specify particularly the grounds upon which he relies in his contest.' It is impossible to conceive of a specification of the grounds of contest broader or more general in its terms. It fixes no place where any act complained of occurred. It embraces the whole district in one sweeping charge. This specification embraces three general grounds of complaint, not one of which possesses that particularity essential to good pleading."

The points decided in the *Duffy* and *Mason* case exactly cover the case in hand, and it is unnecessary to examine any of the other points raised in the case. Fearing, however, that, unless the merits of the case are taken up and examined, injustice may be done, the committee have, at the expense of much inconvenience and loss of time, examined the questions raised, and present their views specifically on each point.

CITY OF GLOUCESTER.

It is claimed that the registration law of Massachusetts requires the registration of voters to cease at twelve o'clock midnight of the seventh day next preceding the day of any election. (See chapter 235, section 2, Massachusetts laws of 1877; see also section 10, chapter 376, acts of 1874; also chapter 251, laws of 1878, and chapter 233, laws of 1878.)

We are inclined to take the view, in construing these statutes, that the registration of voters does not, as claimed by the contestee, "cease at twelve o'clock midnight of the day next preceding the day of election," but that chapter 251 of the laws of 1878 extends the right of registration under the conditions therein named up to the opening of the polls. But it is not necessary for us to decide this question, and we do not, much preferring that the courts of Massachusetts shall first construe their own statutes, and when they have undergone judicial construction we would follow the decisions of the courts of that State.

We retain the vote of the city of Gloucester as returned.

MARBLEHEAD.

It is claimed that William H. C. Coates, jr., voted twice, and that he voted for the contestee, and that one of the ballots was counted. If the contention of the contestant is correct, one vote must be deducted from the contestee, as it is shown that when the selectmen, in counting the votes, found the two ballots together, one of them was torn up and the other counted.

The vote of L. R. Woodfin is next attacked, on the ground of residence. It is claimed that he was not a resident of Marblehead. It seems to be conceded by contestee that Woodfin's vote ought not to be counted.

The three Hathaways, father and two sons, who voted at Marblehead, are attacked on the ground that they actually lived in Salem and kept up a nominal residence in Marblehead. As to Benjamin G. Hathaway, sr., if it be conceded that he voted at Marblehead, it is not shown for whom he voted. As to George G. Hathaway and Benjamin G. Hathaway, jr., it is conceded they voted at Marblehead, and voted for the contestee. Residence or domicile is to a great extent a question of intention, and a liberal construction of the statutes of Massachusetts on that subject, we think, will not justify us in finding the two latter-named persons to be illegal voters.

DANVERS.

ten challenged votes which were returned from this town and, it is claimed, were not counted for the contestant, remain in some doubt. Exhibit B, page 23 of the able brief of contestee's counsel, contains a full copy of the report of the executive council relative to the counting and tabulating of the votes in the sixth Congressional district of Massachusetts. It would seem, by an examination of that document, that there were ten challenged votes returned from Danvers which were not counted for the contestant and not counted, but by an examination of the report of Josiah Ross and Otis F. Putnam (pages 12 and 13 of the brief), it appears these ten votes were, in fact, counted.

The law of Massachusetts requires that when a vote is challenged, the voter offering to vote shall write his name upon the back of the ballot and the law also requires that the party's name who challenged be written thereon and put into a separate envelope and labeled as a "challenged vote"; and the law also requires all challenged votes to be counted if the voter insists upon voting, after being challenged.

This, we think, was not done in these cases. Inasmuch as it was necessary to decide the questions involved in these votes, we decided nothing concerning them.

WEST NEWBURY.

It is claimed that the vote of James Furgison should be counted for the contestant. We do not think the evidence sufficient to justify us in counting it for either party.

As to the vote of Sheedy MacNamara, he probably voted under the impression that he would be able to enlist the active support of certain promiscuous citizens of the town in his behalf in getting him discharged from a prosecution for the violation of some of the laws of Massachusetts then pending against him. If his testimony is to be considered of sufficient weight to establish anything, it would seem to show that he applied to more of the selectmen for their influence in getting the prosecution dismissed, and offered for this influence to vote a certain ticket. His testimony due weight, if it shows anything it shows simply that he voted a ticket that he would not have voted had he been free of the charge thus hanging over him. We do not think we could count his vote for the contestant, but would rather throw it out entirely as tainted and not a perfectly free ballot.

It is also claimed that some man as he voted said, "Here's a vote for the contestant." It is also claimed that Sheedy MacNamara influenced certain friends, this being one of them, to vote the ticket upon which the name of the contestant was printed, under the idea that by so doing he was to escape prosecution, and that therefore the vote of the man who shouted at the time he voted "Here's a vote for Sheedy" should be counted for the contestant. In this view of the case we cannot see. The evidence is entirely insufficient to establish the fact that the man voted, or if he did vote, for whom he voted, or that he was improperly influenced to vote as he did.

AMESBURY.

The constitution of Massachusetts prescribes the qualification of electors. Among the qualifications it is made necessary that before a man shall be allowed to vote he shall be able to read and write in the

English language; and the registry law of 1874 was designed to more effectually carry out this provision of the constitution. We have nothing to do with the policy of the law, but simply to enforce that which the people of Massachusetts enacted into statutes for their guidance. It is strenuously urged that persons whose names had been upon the registry lists previous to the general election of 1878, and had been recognized as voters, and had voted at several preceding elections, could not be subjected to the test of being required to read and write in the presence of the registration officers as a condition to being registered. We cannot agree to this construction of the law relative to the duties of the registration officers. We think that it is a reasonable regulation, that the officers in charge of registration should see to it that persons offering to vote possess the necessary qualifications; and we cannot see that, because persons not qualified to vote have been allowed to violate the law on one or more occasions, they can be heard to plead such violation as a bar to the enforcement of the law against them thereafter. Whenever the disqualification of voters appears, it is clearly the duty of the registration officers to refuse to register them. If the registration officers refuse in an illegal way to register this class of persons or give a wrong reason for their refusal, still this would give such persons no right to vote while they admit that they are clearly disqualified under the constitution. We therefore hold that all persons who could not read and write, as required by the constitution of Massachusetts, were not legal voters, and cannot be heard to complain of any technical violation of law by the registration officers, whereby they were deprived of registration, while admitting at the same time that they did not possess the constitutional qualifications of electors.

As we have said, we have nothing to do with the policy of the laws of Massachusetts; her own citizens must take care of that; all we have to deal with is the enforcement of the law as we find it.

This disposes of the claim of the contestant of the voters of the town of Amesbury.

HAVERHILL.

As to the forty-two printed ballots with Boynton's name erased, which are claimed to have been discovered upon a recount or re-examination of the ballots, we do not think the evidence sufficient to justify us in finding that the votes were originally thrown for Mr. Boynton and afterwards corruptly changed. The presumption that the sworn officers of the law have done their duty must obtain until the contrary clearly appears.

As to the defective votes, we have not time to set out each one specially, but agree that eight votes should be added to the sitting member's returned vote, and fifteen to the contestant's returned vote. There should also be deducted from the contestee's returned vote one other vote, because the voter had received aid from the town within two years and under the law was not entitled to vote, and the table would then stand as follows:

Loring.....	10,3 ~~39~~
Add defective votes	8
	10,3 ~~47~~
Deduct Coate's vote	1
Deduct Woodfin's vote	1

Deduct McNamara's vote	1	
Deduct pauper's vote	1	
	—	4
		10,343
Boynton		10,226
Add defective votes		15
		10,241

GROVELAND.

The returned vote of this town is stated as follows:

Loring	158
Boynton	130

It is admitted that one hundred and thirty-eight (138) ballots were counted for the contestee, the designation upon which ballots was as follows: "For Representative, sixth district, George B. Loring, of Salem" It is claimed that under the law of Massachusetts this was not a sufficient designation of the office, and that the ballots should not have been counted for the sitting member as votes for the office of Representative in Congress from the sixth Congressional district of Massachusetts.

The law of Massachusetts, chapter 7, section 13, is as follows: "No vote shall be counted which does not *clearly* indicate in writing the office for which the person voted for is designed." The word "writing," as it occurs in that section, under another statute of Massachusetts is allowed to include printing, as well as any other mode of representing words and letters. We do not think the law of Massachusetts changes the general rule with reference to the designation which must appear upon all ballots in order to make them effectual. The words, "No vote shall be counted which does not *clearly* indicate," &c., adds nothing to the general rule of law, which requires the election officers to reject any vote when either the name of the person intended to be voted for or the office which the voter intended the person voted for to fill does not appear from the ballot itself. That is to say, where there is such ambiguity in the writing or printing of the name of the person voted for, or of the office for which he is a candidate, that it is impossible to tell from the ballot itself what the name of the person intended to be voted for is, or the office which the voter intended him to fill, the ballot must be rejected, and no extrinsic evidence can be heard to supply the defect.

The public law of Massachusetts created the sixth Congressional district. There was no other "sixth district" in which any of the voters of Groveland lived except the "sixth Congressional district," nor did they live in any other sixth district, nor was there a Representative office to be filled in any sixth district in which the town of Groveland was situated except the sixth Congressional district.

So it seems to us, in the light of the public law of Massachusetts creating this sixth Congressional district, and the geographical location of Groveland, and the ballot itself, with the designation of "Representative sixth district," all considered together, makes the designation sufficient on the ballot to indicate the office which the voter designed when he cast the ballot, and is within the true interpretation and meaning of the law of Massachusetts, when it declares that "the ballot shall clearly indicate the office for which the person voted for is designed."

Judge Cooley, in his work on Constitutional Limitations, lays down the following general proposition as being the law relating to this subject:

Every ballot should be complete in itself, and ought not to require extrinsic evidence to enable the election officer to determine the voter's intention. Perfect certainty, however, is not required in these cases. It is sufficient if an examination leaves no reasonable doubt upon the intention, and technical accuracy is never required in any case. The cardinal rule is to give effect to the intention of the voter whenever it is not left in uncertainty.

The name on the ballot should be clearly expressed and ought to be given fully. Errors in spelling, however, will not defeat the ballot if the sound is the same; nor abbreviations, if such are in common use and generally understood, so that there can be no reasonable doubt of the intent.

As to extrinsic evidence and what may be considered by the election board in determining from the ballot who and what was intended by the voter, the author says:

We think evidence of such facts as may be called the circumstances surrounding the election, such as who were the candidates brought forward by the nominating convention, whether other persons of the same names resided in the district from which the officer was to be chosen; and, if so, whether they were eligible or had been named for the office * * * is admissible for the purpose of showing that an imperfect ballot was meant for a particular candidate, unless the name is so different that to thus apply it would be to contradict the ballot itself, or unless the ballot is so defective that it fails to show any intention whatever; in which cases it is not admissible.—Cooley's Constitutional Lim., 609 *et seq.*

See, also, McCrary on Elections, section 395.

There are other matters alluded to, both by the counsel for contestant and counsel for contestee—matters which are of grave importance, and will, at the proper time and place, evidently receive the consideration which their gravity demands; but we do not consider it our duty to decide the questions thus urged upon us, and unanimously agree that they cannot affect the question at issue between the two parties in this contest.

We are also of opinion that the tabulated statement hereinbefore given shows that the sitting member is entitled to retain his seat.

We therefore recommend the adoption of the following resolution:

Resolved, That George B. Loring is entitled to retain his seat in the Forty-sixth Congress as a member from the sixth Congressional district of the State of Massachusetts, and that E. Moody Boynton is not entitled thereto.

W. H. CALKINS.

We concur in the result declared by the foregoing report.

SAM. L. SAWYER.
W. G. COLERICK.
W. M. SPRINGER.
E. C. PHISTER.
EMORY SPEER.
VAN H. MANNING.
R. F. ARMFIELD.
J. WARREN KEIFER.
F. E. BELTZHOVER.
JOHN H. CAMP.
E. OVERTON, JR.

I agree, except as to the opinion expressed on the registration law. The vote of the person who received aid from the town within two years, but who was not receiving aid at the time of the election, should be counted.

W. A. FIELD.

DECEMBER 21, 1880.—Mr. WEAVER, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

I cannot concur in the report of the majority of the committee in this case.

Contestee claims his election by 102 majority.

The report of the majority of the committee sustains this claim and is clearly wrong.

At Marblehead, seven illegal votes were counted for contestee, to wit, two votes cast by W. H. C. Coates, the votes of the three Hathaways, one of two folded ballots, and the admitted illegal vote of Woodfin.

I think the testimony is ample to sustain the charge of illegality as to all these votes.

The evidence of John E. Davis and others, pages 7, 10, and 12 of the record, establishes the fact that Coates voted two separate ballots, and the ballots cast by him, in my opinion, cannot be confounded with the folded tickets found in the box.

As to the three Hathaways, the testimony clearly shows that they had no residence at Marblehead and were not entitled to vote there. They nevertheless did all three vote for contestee. (See pages 16 to 19 and 36 of the record.)

DANVERS.

At this polling place ten votes for contestant were challenged, but the challenges were not made good. These votes were not counted, as they should have been, for contestant.

It is clear from the official report of the ex-council of Massachusetts (see record, page 23), relative to the counting and tabulating the vote of the 6th district, that these votes were left out of those counted for contestant.

WEST NEWBURY.

James Ferguson's vote was offered, and refused on the ground that, although his taxes were all paid, his name by a clerical error and omission was left off the list. As the law quoted from Massachusetts statutes by contestant's counsel permits "to correct a clerical error or omission" in the townships even on election day and after the opening of the polls, therefore his name should have been replaced and his offered vote must be counted for the contestant. The case is remarkable, as it was applied to a well known and unexceptionable citizen voter, a farmer who had paid his taxes, and whose farm adjoined Mr. Boynton's. He publicly expressed his desire to vote for Mr. Boynton, and no reason has been assigned for his disfranchisement, the selectmen now acknowledging their error. It is in the uncontradicted testimony of Ferguson that two other citizens, named Heath and Dorkins, desiring to vote for Boynton, were disfranchised in the same manner the same day, and as the contestee was present in counsel and did not attempt to rebut it, their votes should also be counted for the contestant.

The case of Sheedy McNamara, for twenty-eight years a voter in that town: was made to vote against his party, his friends, and his conscience on fear of three months' solitary confinement for simple drunkenness, third offense (see statutes of Massachusetts, quoted); a man of education, as claimed by counsel of contestant, who had been a leader, many

years back, among the Irish citizens, having fallen into the evil habit of drink, was thus placed within reach of the severe laws of Massachusetts. Receiving information that the warrant was held over him, when asked by a former town officer, and a Republican of influence, why he and the Irish were going to vote for the contestant's party, replied that if they would quash the indictment, and not arrest him on election day he would vote the Republican ticket.

The promise was made, and subsequently he applied to the selectmen to protect him from the serving of the warrant on election day, promising to vote their ticket and use influence with his friends to vote the same for him. One of the selectmen asked him how many votes he could get. He replied, he might get more than he expected. They told him to come down, and they would ask the sheriff not to arrest him; one selectman saying he would speak to the officer not to arrest him, and the other nodded assent. McNamara voted an open Republican ballot in the presence of the people, holding it up, and saying, "It weighs ten pounds, for I am voting against my conscience."

He testifies that he voted for Loring but desired to vote for Boynton. His brother-in-law did the same, saying, as he voted his own ballot, the selectman, "Here is a vote for Sheedy." If these voters were good enough to vote for the Republican candidate under the terror of a dupe, such influence to change his vote is a crime against the freedom of Massachusetts. We trust it is never to be repeated in a land that has done so much for freedom and humanity. Taking their two votes from Loring and adding to those that have preceded, counts a change of seven votes in favor of contestant. To what further extent this peculiar species of intimidation was carried on at this polling place we probably never be known. We next come to

AMESBURY.

The evidence shows that the large woollen mills had been idle for few years, and that something more than a thousand hands were unemployed, with its resulting poverty and misery.

The selectmen did not give proper opportunity for the registry of names as by the laws cited in this case required; they enrolled the names of several who were disqualified by the educational and pauper clause when men promised to vote their Republican ticket, and refused to register or permit to vote, among others, fifty-five old voters at or time whose taxes were paid and who, being old voters, had previously exercised their legal rights. The statutes of Massachusetts, disfranchising the illiterate, permit voters who were such at the time the law was adopted to vote. Neither can any taxpayer's name be dropped from the voting-list without examining and ascertaining his disqualification.

This was done to a degree which might throw out the entire vote of Amesbury, giving fifty-two votes to the contestee; or if the votes of these old voters, whose taxes the selectmen received and then disfranchised, be counted, with three illegal votes deducted from Loring, gives 55 votes to the contestant. It appears probable from the evidence that the usual liberal previous conduct of elections would have secured the contestant's election without further reference to any town in the district, and your committee submits it is his duty to check the severe injustice, and illegality practiced upon these poor men, waiting years in misery for the mills to start.

The Statutes of Massachusetts, constitutional amendment, section chapter 7, page 57:

"ART. XX. No person shall have the right to vote or be eligible to office under the constitution of this commonwealth who shall not be able to read the constitution in the English language and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requirements, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect." Adopted 1857.

HAVERHILL.

In the city of Haverhill, it is claimed by brief of counsel for contestant, important changes were made in the telegraphic report of the result. We only know that the official recount and examination of the ballots occurred November 8, 1878. At this second examination the discrepancy between the ballots for governor and for Congressman was rendered still more suspicious by the discovery of forty-two printed ballots that had been deposited in the boxes for Mr. Boynton with his name erased by pencil, left blank, and no other name substituted. As there were, besides, both a Democratic and Republican candidate running, it is manifest a voter desiring to defeat Mr. Boynton by using his pencil, after erasure would have substituted the name of some opponent, as time would have permitted the individual voter. If the votes were tampered with about supper-time on the evening of election, as suggested by counsel in first brief, and when the telegraphic reports he claims showed the change that night, it is a wrong that ought to be righted. Mr. Joseph Ridgway's testimony is important on account of his experience as alderman and poll-inspector, and he is at present one of the school board of that city. He examined the erased ballots and assisted in the second official recounting. He was the legislative candidate on the Democratic ticket, and, having charge of the vote-distributors for the Democratic and Greenback party in the city of Haverhill, had personal and official knowledge from the messengers in every ward, and visited each ward personally during the election-day. He swears he heard of no such ballots being voted, or blank erasures, as substitution would count doubly; therefore, such wholesale destruction seems a fraud. Owing to the intensity of the opposition indicated in this election, we incline to the belief that these forty-two ballots were voted without any erasure. Assuming that we are correct in our views herein expressed, the table will stand as follows:

Loring.....	10,339
Add defective votes.....	8
	10,347
Deduct illegal vote at Marblehead.....	7
	10,340
Deduct at West Newbury:	
Sheedy McNamara	1
Sheedy's brother-in-law	1
	2
	10,338
Boynton	10,226
Add defective votes.....	15
	10,241
Add for Danvers, challenged votes.....	10
Add West Newbury	3

Add Amesbury.....	55
Add Haverhill	42
	10,351

This calculation clearly elects contestant, to say nothing of the fact that 138 ballots were counted for contestee at Groveland, the designation upon which was as follows: "For Representative sixth district, George B. Loring, of Salem." It is claimed, and we think with much propriety, that under the laws of Massachusetts this was not a sufficient designation of the office, and that the votes should not have been counted. The law of Massachusetts, chapter 7, section 13, is as follows: "No vote shall be counted which does not *clearly* indicate in writing (or printing) the office for which the person voted for is designated." The plain meaning of this law is this: the office must be "clearly indicated" on the ballot itself, and cannot be made to appear by other and extrinsic testimony. The law is clearly mandatory, and the counting of such ballots is inhibited.

There are ten legislative districts numbered six in Massachusetts to which these ballots could as readily be made to apply. There are three sixth districts within the sixth Congressional district. (See testimony of Joseph Ridgeway, pages 87, 88, of the record.)

We now approach another proposition of vital importance both to the State of Massachusetts, to the country, and to the contestants; and I will embody the observations of the learned counsel for contestant, General Butler, in relation to this matter, and make them my own. They state the propositions and facts with great clearness and force.

DISFRANCHISEMENT OF CITIZENS.

By an amendment to the constitution of Massachusetts, Article XX (page 38, General Statutes), adopted the 3d day of May, 1857, it is provided as follows:

No person shall have a right to vote or be eligible to office, under the constitution of this commonwealth, who shall not be able to read the constitution in the English language, and write his name.

Then follows the provision as to physical disability and age.

This article was adopted by the legislature of 1854-'55, and ratified by the people on the 23d day of May, 1857, by a vote of 23,833 in favor, and 13,746 against, out of some 150,000, the then voters of Massachusetts.

Under it the most learned professors of Europe, coming here and taking upon themselves the duties and privileges of citizens, could not vote, unless they were able to read English. It attracted no attention, and has not been enforced by a statute until since 1874, when the dominant party in Massachusetts began to fear for their majority.

By the official report of the Massachusetts census bureau of the State census, taken in 1875, it appears that there were 419,686 taxed persons, called "ratable polls," *i. e.*, of 21 years of age and upwards, of which number 2,539 were "idiotic" and "insane," 3,578 were convicts, 2,383 were paupers, 79,136 were aliens; and 31,144 aliens, and 3,153 native born, total 34,597, were classed under the head of "illiterate," which means not able to read the constitution in the English language and write their names. It also appears that there were 351,113 names on the voting-lists.

Now, the population of Massachusetts in 1870 was 1,457,352 by the United States census. The whole population by the census of 1875 was ~~1,500,000~~

1,651,652, making an increase of 194,300, or 13.33 per centage of gain. Assuming that the percentage of increase of population from May, 1875, to November, 1878, was the same as it was from 1870 to 1875 (in the proportion of the lengths of the two periods of time covered by these dates), although in fact the gain would be considerably greater, and that there would be a corresponding increase in the number of ratable polls, of voters, and of each of the prohibited classes, we have the following table, showing first the statistics under these several heads, as reported in the Massachusetts census for 1875, and secondly the estimated gain of each class up to November, 1878 (three and a half years), on a calculated increase of 9 per cent. for that period :

May, 1875.—Table.

Ratable polls, i. e., males above twenty years	449,686
Number of voters, native-born	281,842
Number of voters, foreign-born	69,271
	351,113
Number of illiterate, naturalized	13,478
Number of illiterate, aliens	17,966
	31,444
Number of illiterate, native-born	3,153
Number of other aliens	61,170
Number of male paupers	2,388
Number of male convicts	3,578
Number of idiotic and insane	2,539
	455,385
Number supposed to be under 21 years old	5,699
	449,686

November, 1878.—Table showing increase.

Ratable polls	490,158
Number of voters, native-born	307,208
Number of voters, foreign-born	75,506
	382,713
Number of illiterate, naturalized	14,691
Number of illiterate, aliens	19,583
	34,274
Number of illiterate, native-born	3,437
Number of other aliens	66,675
Number of male paupers	2,603
Number of male convicts	3,900
Number of idiotic and insane	2,768
	496,370
Number supposed to be under 21 years old	6,212
	490,158

By the Massachusetts census of 1875 the number of ratable polls was 449,687. Adding 13½ per centage of gain from 1875 to November, 1878, gives us 490,158 ratable polls at the time of this election. Applying the same percentage to the illiterate native-born, aliens, paupers, convicts, idiotic, and insane, we should deduct from said ratable polls 113,657, leaving 376,501 ratable polls November, 1878. Allowing four per cent. for stay-at-homes, 15,060, leaves 361,441, of whom but 256,332, being but 67 per cent., voted, one-third of the voting population being disfranchised.

The whole number of votes cast in the State in the election of 1878 was 256,332.

From this table may be deduced the following startling facts:

That of the 376,501 citizens of the United States, made so by the 14th amendment (allowing that four per cent. of the total vote of the State remained away from the polls), 136,859 were disfranchised from other

causes than criminality, idiocy, and insanity, the causes being what are known as "illiteracy," failure to pay a tax, and pauperism.

By section 1, chapter 376, of the law of 1874, every male citizen twenty-one years of age and upwards (except paupers, persons under guardianship, and persons excluded by "article twenty of the amendments to the Constitution), who has resided in the State one year, and within the city or town in which he claims a right to vote six months next preceding any election of city, town, county, or State officers, or of Representatives to Congress, or electors of President, and Vice-President, and who has paid by himself, his parent, master, or guardian, a State or county tax, assessed upon him in this State within two years next preceding such election, and every citizen exempted from taxation, but otherwise qualified, shall have a right to vote in all such elections; and no other person shall have such right to vote."

Thus it will be seen that, by the constitution and laws of Massachusetts, 105,109 persons are disfranchised, in contravention of the 1st section of the 14th amendment to the Constitution of the United States, which was adopted by the State of Massachusetts prior to the 21st day of July, 1868, when it was declared adopted by resolution of Congress, which ratification has never been withdrawn by her, and so is at least binding upon Massachusetts. This section is as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Now, is the right to vote one of the "privileges or immunities" of a citizen of the United States? That is answered by section 2 of the same article, which provides a penalty against the State for depriving a citizen of a right to vote at any election, as follows (see, also, 23 Pick. R., 308, where it is decided to be a privilege, per Shaw, C. J.):

But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of such citizens twenty-one years of age in such State.

By chapter 3, General Statutes of Massachusetts, on construction of statutes, it is enacted that the word "spendthrift" shall include any person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery.

By chapter 109, section 9, of the General Laws of Massachusetts, when any person, by excessive drinking, gaming, idleness, or debauchery of any kind, so spends, wastes, or lessens his estate as to expose himself or his family, the mayor and aldermen, or the selectmen of the city or town of which such spendthrift is an inhabitant or resident, or upon which he is or may become chargeable, may present a complaint and have him put under guardianship, according to the provisions of that chapter.

And all those citizens of the United States, *i. e.*, those who cannot read and write, who have not paid their taxes, or are so unfortunate as, some time in their lives, to have required aid from the public, are, by the laws in force in Massachusetts, deprived of their vote, while idiotic and insane persons, where not under guardianship, have full right to

vote; and we have a school, supported by the State, in which "idiotic and feeble-minded youth" are taught to read and write, and thus be qualified to vote under the equal, just, and discriminating laws of Massachusetts.

Leaving out the idiots, insane, aliens, and convicts, it appears demonstrable that 105,109 citizens of the United States have their immunities and privileges abridged, and are deprived of their right to vote in that State.

We have already commented upon the testimony which we have examined in regard to the towns of Amesbury and West Newbury; how these laws were enforced to the oppression and disfranchisement of the humbler class of citizens, and with the purpose of compelling them to vote according to the dictates of the dominant party. This mode of carrying elections in Massachusetts is termed, by a newspaper of the largest circulation of any daily newspaper in the State, which advocated the Republican candidates in this election, and recommended, as civilized bulldozing.

We have also shown that if the fourteenth amendment to the Constitution of the United States is put into effect, and the representation of Massachusetts is apportioned by a reduction "in the proportion which the number of such male citizens shall bear to the whole number of such citizens twenty-one years of age," it would reduce the number of Representatives from eleven to eight.

Now, as the total vote of this district (23,275) is nine and eight one-hundredths (9.08) per cent. of the total Congressional vote of the State, the same percentage of the whole number of citizens disfranchised in the State, viz, 105,109, will approximate very nearly the number disfranchised in the sixth Congressional district, which we find to be 1,646 for "illiteracy" and 11,475 for failure to pay a tax, making a total of 13,121—considerably more than half of the total vote thrown in the district, or 2,782 votes more than were cast for any candidate.

Shall the State, by its laws and their execution, be allowed to disfranchise so many of its citizens, and have the benefit of the representation of these disfranchised citizens in Congress and in the Electoral College under the present apportionment? Let the law under which this very apportionment is made answer.

Section 6, chapter 11, of the acts of 1872, approved February 2, 1872, 17 Stat., page 28, under which the apportionment is made, enacts—

That should any State, after the passage of this act, deny or abridge the right of any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, to vote at any election named in the amendments to the Constitution, article fourteen, section two, except for participation in the rebellion or other crime, the number of Representatives apportioned in this act to such State shall be reduced in the proportion which such male citizens shall have to the whole number of male citizens twenty-one years of age in such State.

This answers the question, and also whether the phrase in the Constitution, article 14, of the amendments, "No State shall make or enforce any law which shall abridge the privileges of citizens," &c., is aimed against a law depriving them of the right to vote. It also settles the question which is sometimes raised, whether a constitutional provision can execute itself without being "enforced by appropriate legislation."

To enforce this law—and all laws ought to be enforced, especially those that guard the rights of the citizen—will substantially diminish Massachusetts from eleven to eight Representatives, and from thirteen electoral votes to ten.

Another question may be raised: It will be observed that this section says, "That should any State, *after the passage of this act*, deny or abridge the rights," &c.

It may be objected that the laws under which the State elections are held in Massachusetts do not appear to have been made after the passage of this act. But if the committee will turn to the law before cited (General Laws of 1874, page 283, chapter 376), they will find that the law imposing these restrictions was passed June 29th of that year, and was an act of the State, therefore, two years after the apportionment act of Congress. In other words, the State took advantage of the apportionment according to the whole number of people granted by Congress in 1872, in order to get the representation, and then deliberately disfranchised, in the face of that law, quite *two-fifths of her voters*, so that a few—scarcely half—of her citizens might control it.

It may be said that this matter can only be readjusted when the reapportionment is made; but the answer to that is patent. Such abridgment of the rights of the citizens of the State is an offense which the Constitution, *ex proprio vigore*, declares punishable by loss of representation, and consequently of electors. When is this offense to be punished? The answer is, when it is discovered, whether it is looked upon in the light of an offense or a wrong done. All offenses should be punished when discovered; all wrongs done, righted when discovered.

Is there any man on the committee who doubts, upon all this evidence, that if it had not been for these disfranchising laws of Massachusetts, and the manner in which they were executed, the contestant would have been uncontestedly elected? There can be but one honest reply to that.

If so, then it is within the power of the House to seat a man who received, upon any count, within a score or two of a plurality of the votes actually thrown, and who would have received a large majority of the votes of which he was unconstitutionally and illegally deprived.

We have done our duty in presenting these wrongs to Congress. Let the House apply the remedy, and right the wrongs, and prevent the wrong-doers from enjoying the benefits of such wrongs, either in too great representation in the House or in the Electoral College, thereby controlling the choice of the President.

We recommend that the following be adopted by the House of Representatives in this case:

Resolved, That E. Moody Boynton is entitled to the seat in the Forty-sixth Congress from the sixth Congressional district of Massachusetts, and that George B. Loring is not entitled thereto.

J. B. WEAVER.

SEBASTIAN DUFFY vs. JOSEPH MASON.

TWENTY-FOURTH CONGRESSIONAL DISTRICT OF NEW YORK.

Contestant alleges fraud, the buying of votes, and other corrupt and illegal means on the part of contestee. Contestee insists that the grounds of contest are not stated with that precision and certainty required by statute.

Held, That the notice of contest is clearly insufficient, but the contestee is estopped by his own acts from assailing the sufficiency of the notice, and its defects have been waived by a subsequent agreement with reference to the taking of testimony.

The proof that rumors existed that persons friendly to contestee improperly influenced their employes to vote contestee's party ticket is incompetent and must be rejected as hearsay. It is necessary to establish the truth of these rumors and not their bare existence; and for the same reason all evidence relating to voluntary statements made by persons not under oath or witnesses must be rejected, as all such hearsay evidence is inadmissible.

Where evidence fails to show that money used by political committees was used to corrupt or improperly influence the voters, such voters cannot be disfranchised, even though members of such committees have possibly violated State statutes by using money for purposes prohibited by such statutes.

A candidate cannot be held responsible for all the imprudent and censurable acts of indiscreet friends, who, in the zealous advocacy of his election, resort to improper means in securing that result without his knowledge, unless the voters affected by such means are sufficient in number to change or render uncertain the result of the election.

Evidence which shows only that certain persons who voted were students at a university in the district creates no presumption that they were not legal voters at the place where such university is located.

The House adopted the report May 21, 1880.

MAY 21, 1880.—Mr. COLERICK, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested-election case of Sebastian Duffy against Joseph Mason, from the twenty-fourth Congressional district of New York, respectfully submit the following report:

The election out of which this contest arises occurred on the 5th day of November, 1878, in the twenty-fourth Congressional district of the State of New York, composed of the counties of Oswego and Madison. The official returns show that the contestee received for Representative in Congress from said district 12,043 votes, and the contestant 11,307, making the contestee's official majority 736.

The grounds of contest are specified in the notice of contest, of which the following is a copy:

NOTICE OF CONTEST.

Hon. JOSEPH MASON,

Hamilton, Madison County, New York :

SIR: Please take notice that I shall, in the manner provided by law and the rules and precedents of the House of Representatives of the United States, contest your election and your certificate of such election as a member of the Forty-sixth Congress of said United States from the twenty-fourth Congressional district of the State of New York, on the following grounds, to wit:

First. That you did not receive a majority of the legal votes cast at the election held in said Congressional district on the 5th day of November last, but, on the contrary, that I did receive a majority of such votes.

Second. That your election was effected and procured by force, fraud, intimidation, promises of favor, corruption, the buying of votes and voters, and other corrupt and illegal means used by you and in your behalf; and that your certificate of election as such member of Congress was and is based upon and the result of such force, fraud, intimidation, promises of favor, the buying of votes, and other corrupt and illegal means used by you and in your behalf.

Third. That your election was procured by illegal votes and illegal voting in your behalf, and by your procurement or the procurement of those interested in your election.

Fourth. That your certificate of election is invalid for the reasons stated in the second specification herein.

Fifth. That I was, on said 5th day of November, 1878, legally elected as such member instead of yourself, and am entitled in your stead to a seat in said Forty-sixth Congress.

Dated Pulaski, December 23, 1878.

SEBASTIAN DUFFY.

The contestee insists that the grounds of contest are not stated with that precision and certainty required by the statute which authorizes and regulates the procedure in contests of this nature. The objections urged by the contestee are presented in his answer, as follows:

II. Your notice in writing served upon me December 26, 1878, is insufficient and incomplete under the statute and practice in such case made and provided, in that it does not specify particularly the grounds upon which you rely; that is to say, your charges that my election was procured by force, fraud, intimidation, promises of favor, the buying of votes and voters, and other corrupt and illegal means used by me and in my behalf, and that my election was procured by illegal votes and illegal voting, and by my procurement or the procurement of those interested in my election, and grounds of contest therefor respectively, do not state who was forced to vote for me, and what fraud contributed to my election, and who was intimidated, or in what manner, place, town, city, or county such intimidation was had, and to whom or in what manner promises of favor were made, and what votes and voters were bought or where and when such votes or voters were so bought, and what other corrupt and illegal means were used by me and in my behalf, and by what illegal votes and illegal voting by my procurement or the procurement of those interested in my election you were prejudiced, and who were so interested, and in what election district, town, city, or county such persons reside and perpetrated such acts complained of.

The statute provides:

SEC. 105. Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest. (Revised Statutes of the United States, page 18.)

McCrary, in his Law of Elections, section 343, referring to this statute, says:

A good deal of discussion has arisen as to what is to be understood by the words "specify particularly the grounds on which he relies." It is evident, however, that these words are not easily defined by any others. They are as plain and clear as any terms which we might employ to explain them. Cases have arisen, and will again arise, giving rise to controversy as to whether a given allegation comes up to the requirement of this statute, and it must be for the House in each case to decide upon the case before it. It may be observed, however, that this statute should receive a reason-

able construction, one that will carry out and not defeat its spirit and purpose. And perhaps the rule of construction which will prove safest as a guide in each case is this: A notice which is sufficiently specific to put the sitting member upon a proper defense and prevent any surprise being practiced upon him is good, but one which fails to do this is bad. (*Wright vs. Fuller*, 1 Bartlett, 152.)

The Houses of Congress when exercising their authority and jurisdiction to decide upon "the election returns and qualifications" of members are not bound by the technical rules which govern proceedings in courts of justice. Indeed, the statutes to be found among the acts of Congress regulating the mode of conducting an election contest in the House of Representatives are directory only, and are not and cannot be made mandatory under the Constitution. In practice these statutory regulations are often varied and sometimes wholly departed from. They are convenient as rules of practice and of course will be adhered to, unless the House in its discretion shall in a given case determine that the ends of justice require a different course of action. They constitute wholesome rules not to be departed from without cause. (*Ibid.*, section 349.)

While it is true that this statute should receive a liberal construction, yet it will not do to permit parties to disregard its provisions. The House, in sanctioning its violation in cases heretofore determined, has created precedents that are now frequently and pertinently cited to justify similar infractions. This practice, if tolerated, will finally result in the virtual abrogation of the statute. The only safe course to pursue is to require at least a substantial compliance with its provisions. We think that the notice of contest in this case is clearly insufficient. It is too indefinite and uncertain in its allegations. As was said in the case of *Bromberg vs. Haralson* (Smith's Digest of Election Cases, page 355)—

It is too vague and uncertain to be good. The statute requires that the contestant in his notice "shall specify particularly the grounds upon which he relies in his contest." It is impossible to conceive of a specification of the grounds of contest broader or more general in its terms. It fixes no place where any act complained of occurred. It embraces the whole district in one sweeping charge. This specification embraces three general grounds of complaint, not one of which possesses that particularity essential to good pleading.

But the contestee in this case is justly estopped by his own act and conduct from assailing the sufficiency of the notice of contest, and its defects have been by him waived. The record contains the following agreement:

UNITED STATES OF AMERICA :

In the matter of the contested election of Joseph Mason, Representative-elect to the Forty-sixth Congress from the twenty-fourth Congressional district, State of New York :

It is hereby stipulated and agreed, by and between Sebastian Duffy and Joseph Mason, contestees, through their respective attorneys, that all affirmative evidence heretofore given or which may hereafter be given be, and remain, in this contest as a part of contestant's case, and that contestee, in consideration of this consent and stipulation on his part, have sufficient time after the expiration of the statutory limit of ninety days in which to give evidence in answer to such new matter so put in evidence, to the end that simple and exact justice be done to all parties, and that contestant have reasonable time to put in evidence in rebuttal only to such evidence as the contestee may give after said ninety days shall have expired. * * *

Dated April 10, 1879.

S. D. WHITE,

Attorney for Duffy.

JOHN J. LAMOREE,

Attorney for Joseph Mason, Oswego County.

D. N. WELLINGTON,

Attorney for Joseph Mason for Madison County.

That such defects may be waived has been determined by at least two decisions of the House. (See *Otero vs. Gallegos*, 1 Bartlett, 178, *Bromberg vs. Haralson*, Smith's Digest of Election Cases, page 356.)

If these defects had not been waived we would feel fully justified, by reason of the insufficiency of the notice, in dismissing this case or excluding the evidence offered in support of the alleged grounds of contest; but in view of this waiver, we are compelled to examine the evidence and determine the merits of this contest.

We will consider the grounds of contest *as stated in the contestant's brief*, and in the order in which they are herein presented, as follows:

On the part of the contestant, it is claimed that a sufficient number of votes were withheld from him and controlled by and cast for the contestee through bribery and the corrupt and illegal use of money by contestee, his agents and servants, and those working in his interest, with his consent, and through intimidation practiced by them, to far more than overbalance these majorities.

The means and appliances used to bring about this result were:

First. The system of bribery and intimidation established by Thomson Kingsford, the manager of the Oswego Starch Factory, a powerful corporation, by which the employes of said Kingsford and of said Starch Factory Company, numbering nearly or quite one thousand voters, have been persuaded by steady employment, at good wages, or the hope thereof, and intimidated by the fear of being discharged from such employment and deprived of the same in future, to vote the ticket to which said Kingsford was favorable and on which contestee was a candidate.

Second. The raising and expending large sums of money by the contestee and those acting in concert with him, with his knowledge and consent, in violation of the statutes of the State of New York, through the agency and instrumentality of the committees of the political organization of which he was the candidate, for the purpose of illegally influencing the voters to attend the polls and vote for said contestee and the candidates for other offices running on the same ticket with him.

Third. The expenditure of large sums of money by political leaders of the party of which the contestee was a candidate, at and about the time of the election, and in giving employment to electors who were day laborers, with a view to exercise a control over their votes as an incident of their employment.

Fourth. Bribery of voters to vote for the contestee, and the buying of the influence of persons controlling or supposed to control the votes of other persons, to procure votes for contestee, and other corrupt and illegal use of money practiced by the contestee, his clerks, agents, servants, and attorneys, and those acting in concert with him, other than the regular committees of the political party of which he was the candidate, and with his assent and approval, in promoting his election.

Fifth. That a large number of persons who were not legal voters voted for the contestee, and their votes are credited to him in the count. [See contestant's brief, pages 2 and 3.]

I.

That rumors have prevailed in the city of Oswego for many years past that Thompson Kingsford, and others connected with him in the management of the Oswego Starch Factory, improperly influence their employes to vote the Republican ticket is clearly shown by the evidence, and we have no doubt that many of these persons who have testified as to the prevalence of these rumors sincerely believe that such an influence is exercised. It is necessary for us to ascertain and determine from the evidence the *truth* of these rumors and not their bare *existence*, as they may have been entirely unfounded and untrue. The charge that such a system prevailed at the time of the election in controversy must be established by competent proof, rendered by sworn witnesses, personally cognizant of the facts upon which the charge is based. All the witnesses examined by the contestant, except three, to whose evidence we will hereafter refer, frankly admit that they have no *personal* knowledge of the existence of such a system, and that the only information possessed by them upon that subject was solely derived from these rumors and from statements made to them by persons professing to have actual knowledge of the facts, none of whom, excepting the three above referred to, were called by the contestant as witnesses to prove the truth of their assertions, while, on the other hand, the contestee

examined as witnesses a large number of the employés of the factory, who positively deny that any such system ever prevailed there, and declare that no improper influence has ever been brought to bear upon the employés affecting their political action, and that they do not know of an instance where persons there employed, and desiring to vote the Democratic ticket, have been deterred from doing so by fear or apprehension that they might be discharged from employment should they do so.

It is our duty to reject all the evidence that has been offered relative to the existence of the rumors to which we have alluded, as it is clearly incompetent, and we must, for the same reason, discard all evidence relating to voluntary statements made by persons not under oath or witnesses, as all such *hearsay* evidence is inadmissible.

The rule that we apply in rejecting this evidence is stated in 1 Greenleaf on Evidence, page 115, thus :

Hearsay evidence is uniformly incompetent to establish *any specific fact which in its nature is susceptible of being proved by witnesses who speak from their own knowledge*. That supposes something better than might be adduced in the particular cases is not the legal ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practiced under its cover, all combine to support the rule that *hearsay evidence is wholly inadmissible*.

None of the evidence excluded by us comes within any of the exceptions to the rule above stated, and this rule has often been applied by the House of Representatives in cases of this character.

The application of this rule results in the rejection of all the evidence introduced by the contestant in support of the first ground of his contest, save that rendered by Daniel Sweeney, Alexander Lemmon, and Hiram Hammond, all of whom were, at different times prior to 1878, employed in the factory, and who claim that they were discharged from their employment by reason of their political sentiments and affiliations.

Daniel Sweeney testifies that in the fall of 1862, *eighteen* years ago, he was discharged by Kingsford because he refused to vote for Wadsworth, the Republican candidate for governor of the State of New York ; that he had worked in the factory for fourteen years continuously, and that was the only occasion that he was ever spoken to by Kingsford on the subject of voting. (See Record, page 202.)

Alexander Lemmon testifies that in 1873 or 1874 he was requested by Kingsford "to go to the polls and peddle tickets for him," and that he was discharged from his employment because he was accused of "peddling Democratic tickets with the Republican heads on." (See Record, page 144.)

Hiram Hammond testifies that in 1876 Kingsford expressed his desire that witness should vote for Hayes for President, which he promised to do, but voted for Tilden, and that in the latter part of December, 1878, at the close of the year's work at the factory, he was discharged from his employment. (See Record, page 987.) That he had worked at the factory "off and on" for fourteen years, and that the occasion to which he alludes is the only time that Kingsford ever talked to him on the subject of politics (page 993).

These are the only instances, extending over a period of *sixteen* years, where it is shown by competent evidence that Kingsford or any other person interfered in any manner with the employés of the factory in the free and unrestrained exercise by them of the elective franchise. There is no evidence in the record, that we have discovered, showing a single instance of such interference on the part of Kingsford or any other person connected with the management of the factory, relating to the election in controversy.

It is proper for us to say that evidence has been presented by the contestee showing, or tending to show, that Sweeney, Lemmon, and Hammond were discharged for other than political causes, namely that Sweeney was discharged on account of his intemperate habit (see Record, pages 209, 361), and Lemmon for like cause and for gross negligence (Record, page 535). Hammond admits on his cross examination that four other employes were discharged at the time of his discharge two of whom were *Republicans*, and that the cause assigned by the foreman for their discharge was that the work was insufficient for the entire force then employed in the factory. (See Record, page 994.)

If such a system does in fact exist, it is deplorable and merits the severest censure. Those engaged in such practices richly deserve the just contempt of all who love liberty and despise tyranny, and they should be punished by the State whose laws they so grievously offend. But the evidence presented in this case is insufficient to authorize us as judges, governed by law, to declare that such a system actually prevailed in the Oswego Starch Factory, at least in 1878. If we accept as true the rumors that prevailed as to its existence, still the evidence is incomplete, as it wholly fails to furnish any data by which the number of voters affected by it can be ascertained; and even excluding the ballots of all the voters then employed in the factory, which are estimated by witnesses at 150 to 200; it would not affect or change the result of the election, as the contestee's official majority is 736.

II.

The contestant, in his brief (page 25), says:

Under our second general heading, we call attention to the statute of the State of New York regulating elections; the acts of the county committees of the party (whose candidate contestee was) in violation of those statutes; the privy of the contestee to those violations, and their effect upon the result of the canvass.

That part of the statute in question which it is claimed was violated is found in volume first of Banks & Brothers, sixth edition of the Revised Statutes of the State of New York, on page 452, being §§ 6, 7, and 8. of title 7, chapter 6, part 1, of the revised statutes, and reads as follows:

"§ 6. It shall not be lawful for any candidate for any elective office, with intent to promote his election, or for any other person, with intent to promote the election of any such candidate, either—

"1. To provide or furnish entertainment at his expense to any meeting of electors previous to or during the election at which he shall be a candidate; or,

"2. To pay for, procure, or engage to pay for, any such entertainment; or,

"3. To furnish any money or other property to any person for the purpose of being expended in procuring the attendance of voters at the polls; or,

"4. To engage to pay any money, or deliver any property, or otherwise compensate any person for procuring the attendance of voters at the polls; or,

"5. To contribute money for any other purpose intended to promote an election of any particular person or ticket, except for defraying the expenses of printing, and the circulation of votes, handbills, and other papers previous to any such election, or for conveying sick, poor, or infirm electors to the polls.

"§ 7. No person shall fraudulently or deceitfully change or alter a ballot of any elector, nor shall furnish an elector any ballot containing more than the proper number of names, or cause any other deceit to be practiced with intent fraudulently to induce such elector to deposit the same as his vote, and thereby to have the same thrown out and not counted.

"§ 8. Every person offending against the provisions of this act shall be deemed guilty of a misdemeanor, punishable by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months."

We have carefully examined all the evidence introduced by both parties, for the purpose of ascertaining the amount of money raised and expended "through the agency and instrumentality of the committees of the political organizations" of which the contesting parties were

candidates, and the purposes for which it was used, and we herewith present a synopsis of the evidence upon the subject:

Charles North testifies that he was the chairman of the Republican county committee of Oswego County in the fall of 1878, and had the general charge of the conduct of the election on the part of the Republican party, and that the committee obtained funds for the campaign by contributions from the Republican candidates, office-holders, and other "*patriotic citizens*," and that these assessments were proportioned to the supposed necessary expenses of the campaign, and that the purposes for which the committee were expected to furnish money was to pay the expenses of public meetings and speakers, distribute papers and documents, print and distribute ballots on election day, and furnish a small sum to each town and ward committee for the purpose of getting the aged, poor, and infirm voters to the polls, and that money had been raised and expended by the Democratic county committee for the same purposes and in the same manner, and that this had been the practice of both parties as long as he has had any acquaintance with political affairs in that county. That such an assessment was made by the Republican county committee of Oswego County in the fall of 1878, and that the contestee, as the Republican candidate for Congress in that district, was assessed \$200 by that committee, which he paid to the witness, as the chairman of the committee, and that it was used for said purposes, and no other (Record, pages 553 and 554); and that from ten to twelve hundred dollars had been raised by the committee in the fall of 1878 for said purposes that passed through his hands (Record, page 557).

James Dowdle testifies that he was the treasurer of the Greenback county committee of Oswego County; that at a meeting of said committee, at which the contestant was present, it was agreed that each candidate should pay for printing tickets and handbills and circulating them, and that no money should be raised except for those purposes; and that an assessment was afterwards made on that basis, and that contestant was assessed \$50, which he paid, and that the money so raised by the committee was used for said purposes. (See Record, page 975.)

John A. Barry testifies that he was the treasurer of the Democratic county committee of Oswego County, and that all moneys raised by that committee for the purpose of carrying on the campaign came into his hands as such treasurer, and that \$140 was raised for that purpose, and was used in paying for the printing and distribution of tickets in the county, and was raised by the assessment of the committee upon Democratic candidates, and that the contestant was assessed \$25, which he paid. (See Record, page 1037.)

Edwin S. Barker testifies that he was the chairman of the Republican county committee of Madison County. That the committee assessed the contestee \$200 to pay campaign expenses, which he paid. That all the assessments made by the committee amounted to about \$700. That the publishers of five Republican newspapers published in the county received \$30 each, making \$150; and that each town in the county received from \$20 to \$50 for the purpose of procuring teams to bring in the indigent voters, and these were all the disbursements made except \$10 paid to Colonel Canter, a Republican speaker, to pay his fare to Auburn. There are fourteen towns in the county. That \$550, being the balance of the \$700 remaining after paying \$150 to said newspapers, was distributed in these fourteen towns to be used in paying expenses in procuring teams and getting out the indigent voters, and to defray the expense in procuring speakers to address the people on the political

issues. That he never heard any talk or suggestion that any of this money was to be used to buy votes or for any illegitimate purpose. (Record, pages 921 and 922.)

Alonzo E. Cherry testifies that he was chairman of the Greenback county committee of Madison County during the campaign of 1878, and that there was money placed in his hands during that campaign to be used for political purposes; that he received \$200 of the contestant, being the amount of his assessment made by said committee; that other assessments amounting to \$265 were paid; that the money received on these assessments of the contestant and others "was all paid out for legitimate business, livery bill and man to travel, printing, furnishing Irish World and documents we had printed, and the Utica paper. We distributed from 1,000 to 1,200 of the Utica paper weekly, 200 copies of the Irish World, besides a large quantity of other papers; also, \$40 for one meeting, hall, and band when Duffy made his speech at Oneida." (See Record, page 728.)

Theodore Leonard testifies that the contestant paid to Mr. Lippitt, as chairman of the Democratic county committee of Madison County, \$100, for which sum he had been assessed by the committee. (See Record, page 259.)

By this evidence it appears that the contestee paid assessments to the amount of \$400 and the contestant \$375. That it was proper for the candidates to make contributions or pay these assessments is conceded by the contestant. The complaint is that a portion of the money so paid by the contestee was used by the committees to whom it was paid for purposes prohibited by the statute, namely, "in procuring the attendance of voters at the polls" who were neither "sick, poor, or infirm," and in paying the expenses of public meetings and speakers. That some of the money was used for these purposes is clearly shown by the evidence. The contestant seeks to hold the contestee responsible for the acts of the members of the committees representing the Republican party in the district who violated this statute, and in the absence of any proof showing, or tending to show, that the contestee directed or authorized the expenditure of the money contributed by him for the purposes forbidden by the statute. A principal is not liable for the illegal acts of his agent, unless done at his instance, or with his knowledge and assent. Good faith and innocence are always presumed. If A intrusts B with money to be used by him for certain lawful purposes, and B, without the knowledge and consent of A, diverts the money from the purposes to which it was to be applied, and uses it for immoral and illegal purposes, A cannot be held liable for the misconduct of B. That the contestee had the right to contribute and pay to these committees money to be used by them for purposes authorized by the statute is not controverted by the contestant, and in the absence of opposing proof the presumption exists that he did not authorize its expenditure for purposes prohibited by the statute. If the statute was violated its offenders are by the provisions of the statute subject to punishment. Under the rigid, illiberal, and unreasonable construction placed upon this statute by the contestant, it is even unlawful for a candidate or his friends to rent a hall for a political meeting, procure music, or employ a speaker to discuss the political issues, because it may tend to promote the election of the candidate, and if such a meeting is held, in disregard of this statute, the legal voters who attended it are subject to punishment therefor by the forfeiture of their votes, regardless of the result that may have been produced by the charms of the music or the eloquence of the speaker; or if a legal voter, who is too indifferent or indo-

lent to attend the election, is conveyed to the polls in a carriage provided for that purpose by the committee of the party of which he is a member, it affords sufficient cause for challenging his vote to show that he was neither "sick, poor, or infirm," and that he was able to walk or pay for his ride to the polls. To so construe the statute is absurd. If the person who attends such meeting or is so conveyed to the polls is a legal voter his vote must be received and counted. We cannot punish legal voters by disfranchising them because members of political committees have possibly violated the statute, as construed by the contestant. The evidence wholly fails to show that the money was used to corrupt or improperly influence the voters. The supreme court of New York, in the case of *Hurley vs. Van Wagner*, 23 Barb., 109 (1858), in construing this statute, said:

A person who pays money for his board, or railroad or steamboat fare, while going to or from a political meeting, or who pays for the use of a room for such meetings, or for the lights or attendance thereat, in one sense contributes money to promote the election of a particular ticket or candidate. But is it a contribution of money in the sense intended by the act? Did the legislature intend to prohibit and punish as a misdemeanor every expenditure of money which might indirectly promote or be intended to promote the election of particular candidates? Public meetings, large assemblies of the people, constant and almost universal intercommunication, one with another, and journeys from one part of the country to another, are the usual and customary means by which the election of particular candidates is made, and they necessarily involve the expenditure of large sums of money which may be said to be contributed. Is this the evil that the act was designed to suppress? If it was, it may be safely said to have utterly failed of its object, for during the twenty-nine years it has been upon the statute book hardly one attempt has been made to enforce it; and the evil practice, if it be one, has gone on and gained additional strength with each additional year. I infer, therefore, that these are not the contributions in money forbidden by the act. If the payment of a sum of money for the use of a room in which to hold a public meeting for political objects, or for the lights used thereat, or for the attendance of a person to prepare such room and keep it in proper order, is a contribution of money to promote an election within the meaning of the statute, so is the money a man may expend upon himself in the payment of tavern bills and the expenses of transportation, in going to and returning from such meetings, equally a contribution of money to promote an election; because all such expenditures tend to the same result, and the money is disbursed for the same object, and that is to aid in the election of a particular candidate or ticket. It is not possible to discriminate between them, so that to adopt the construction claimed is to impute to those who framed the law the most absurd intentions, or to give it an effect which they could not have contemplated.

Even if the law justified us in excluding the ballots of those voters who were conveyed to the polls, although neither "sick, poor, and infirm," yet we would be unable from the evidence to compute their number or determine for whom they voted; nor could we ascertain from the evidence whether the orators, under pay, who addressed public meetings in rented halls, converted lukewarm Democrats or indifferent Republicans into "stalwarts," and, if so, what ones, or how many.

III.

The only evidence introduced by the contestant in support of this charge is that rendered by Richard Grace, John C. Cooley, and David H. Judson, as follows:

RICHARD GRACE SWEARS.

1. Question. What is your age, occupation, and residence?—Answer. Age, thirty-three; occupation, mechanic; residence, No. 10 Yates avenue, eighth ward.

32. Q. Do you know whether the Oswego starch factory or Thompson Kingsford last fall at the time of the election were putting up or laying the foundation for a large building on West First street, in the city of Oswego?—A. Don't know personally. I saw Kingsford there superintending the work, and reputation said he was the proprietor.

33. Q. Where was this building you saw Thompson Kingsford superintending located?—A. On the west side of Oswego River, on the block formerly known as the new hotel block, on the north side of Seneca street, between First and Water streets.

34. Q. Can you tell about how many men there were at work on that building immediately before and after the fall election?

(Objection as No. 13.)

A. There were from two to three hundred men at work there at different times.

35. Q. Will you state whether there was a *current general report* in the city of Oswego at the time of the last fall election that Thompson Kingsford required all those men to vote the Republican ticket as a condition of being retained in employment?

(Objection as to No. 13.)

A. It was so reported.

37. Q. In your testimony here given did you regard the men working upon that building as in the employment of the starch factory company?

(Objection as to No. 13.)

A. I did.

38. Q. At what time did they commence this building?—A. Some time last September.

39. Q. State at what time, as near as you can, there were the most men at work on this building with reference to the time of election?

(Objection as to No. 13.)

A. The best of my recollection, about the middle of October.

40. Q. State whether about the same number of men were continued in employ from the middle of October until after election?

(Objection as to No. 13.)

A. There were.

41. Q. At about what time did they commence to reduce the number of men at work?

(Objection as to No. 13.)

A. A few days after election.

(See Record, pages 186 and 187.)

Deposition of John Clark Cooley.

Witness being duly sworn, deposition taken in pursuance of notice filed:

2151. Question. Where do you reside? State your age, residence, and occupation.——

Answer. Resides city of Oswego, third ward; age fifty-seven years; at present can collector.

2202. Q. Do you know whether last fall, and within a month or two before his election, Mr. Kingsford took into his employ a considerable number of other men engaged in the construction of a building in the city of Oswego?—A. I do.

2203. Q. Do you know how long they were continued in his employ after the election?—A. I think they were kept until the neighborhood of December or into December till it froze up.

2204. Q. Do you know about how many men?—A. No, I don't; a good many; probably seventy-five or more.

2205. Q. When was it, then, when you say you saw seventy-five men?—A. Some time in October.

2206. Q. Do you know whether it was *generally understood* that the number was increased just before election?—A. No, sir.

2207. Q. Was there a *current report* that all the voters working on that building were required to vote the Republican ticket last fall by Mr. Kingsford or the bosses of the work?

(Objected to as before; same disagreement.)

A. After election, two or three times I heard that they had been called upon to vote the Republican ticket. I don't know anything about *current report* at all, for I was out.

2208. Q. Who did you understand they had been called upon by?—A. I understood that Mr. Kingsford had had them called upon to see how they were going to vote.

(See Record, page 118.)

Cross-examination:

3107. Q. That building you understand Mr. Kingsford to be erecting for the occupation of O. M. Blanchard & Co. with their door, sash, and blind factory?—A. Yes.

3108. Q. That firm was burned out last summer, was it not?—A. Yes.

3109. Q. About how many men did you understand the firm of Blanchard & Co. have employed in their business?—A. I have heard from seventy-five to one hundred and fifty.

3110. Q. Did they not find it difficult to find any place to occupy, and for that reason was it not feared that they would leave the city?

(Counsel for contestant: I object to it as irrelevant and immaterial, and has been answered. Notaries disagree.)

A. All I know is what I saw in the papers. I saw it so stat d.

3111. Q. And did you not understand that the committee on manufactures of the board of trade waited on Mr. Kingsford to induce him, if possible, to furnish a building or their occupation?—A. I have no recollection of it.

3112. Q. Did you not understand that this building in question by Mr. Kingsford was commenced for that purpose?—A. Yes.

3113. Q. And did you not understand that from the commencement the work was pressed forward with all the force that could be profitably employed until it was topped by the winter?—A. I did.

3117. Q. Who said to you after the election that the men employed by Mr. Kingsford on that building had been called upon by Mr. Kingsford to vote the Republican ticket?—A. I can't remember now.

3118. Q. Can you remember any time or place when anything of the kind was said?—A. I can't remember nowhere.

3119. Q. Can you swear that you heard anything of the kind said before the trial of this contest began in this room a fortnight ago yesterday?—A. I can, positively.

3120. Q. What was it you heard said?—A. The remark I heard was that Mr. Kingsford had had the men that was to work on the Blanchford building seen relative to voting the Republican ticket. That's all I did hear.

3121. Q. By whom was that remark made?—A. I can't tell you.

3122. Q. Can you tell anything of the time, place, or person, where, when, or by whom that remark was made?—A. I cannot.

3123. Q. How many times did you hear that remark made?—A. I have just answered that question by saying only once.

3124. Q. Why did you say, in answer to question 2207, that you had heard that said two or three times?—A. At that time my recollection may have been two or three times, but now, on reflection, I can recollect positively only once.

(See Record, pages 167 and 168.)

It will be observed that these witnesses do not profess to have any personal knowledge relative to Kingsford, or any other person, exercising, or attempting to exercise, any influence over the employes engaged in the construction of said building in requiring, inducing, or persuading them to vote for the contestee on the Republican ticket. They merely testify to the existence of a rumor that such influence was exerted over them. If any such rumor existed it was wholly without foundation, as is clearly and convincingly shown by the evidence produced by the contestee, to which we will hereafter refer.

The evidence upon which the contestant mainly relies, in support of this charge, is that rendered by David H. Judson, as follows:

Deposition of David H. Judson.

6356. Question. State your name, age, residence, and occupation.—Answer. Name, David H. Judson; age, fifty years; occupation, real estate and boat repairing; residence, Oswego City, East Seventh street, No. 151.

6403. Q. Did you know of the building of the shade-cloth factory in the city of Oswego last fall just prior to election? and, if so, state whether the same was a large or small building, or required the employment of a large or small number of men to erect the same; also state in the same connection of Thompson Kingsford erecting a large building on the corner of West First and Seneca streets last fall, and state whether there was a large or small number of men there employed prior to and at the time of election.—A. I know of the building of the shade-cloth factory, which was commenced during the summer season of 1878, and that a large number of men were employed thereon. I also know of the erection, or of the commencing to erect, the building known as the sash and blind factory by Thompson Kingsford, and that there was a large force of men employed on that building.

6404. Q. And was not the Hon. George Z. Sloan, who, at the time of the erecting of the shade-cloth factory and at the time of the election, was a candidate for member of assembly, the principal man as you understood in the erection of that factory, and a warm supporter of Joseph Mason for member of Congress in this district as against Mr. Duffy?—A. He was one of the principle men engaged in the construction of the shade-cloth factory; and as to the rest of the question, I should say yes.

6405. Q. And did he, Sloan, not receive a large majority for member of assembly in this city?—A. He did.

6406. Q. And have you not *understood* through political circles that Mr. Sloan was desirous of being represented by as large a majority as he could obtain, as he was obtaining prominence in the State of New York as a prominent candidate before a Republican convention hereafter to be held for governor?—A. Yes.

6407. Q. And was not the principal fight at last fall's election made to secure the election of Judge Mason and increase the majority for Sloan, as you understand it from Republican politicians?—A. Yes; upon the Republican side.

6412. Q. From your knowledge of the political position and desires of Mr. Sloan and Mr. Kingsford as leading Republicans to secure the election of Judge Mason, and the embarrassed circumstances of the large number of their employes upon the new buildings referred to heretofore, and from what you observed and knew of that class of voters, *do you not believe* that a great many of them, or a large majority of them, were induced by reason of their obtaining employment to vote for Mason and Sloan when the same was against their political predilections?

(Objected to as not proper in rebuttal and as immaterial to the issue, and as incompetent, and as calling for the belief of witness. Notaries differ, Coon holding it improper as rebuttal.)

A. I should say a large number of them did.

(See Record, pages 1005, 1006, and 1007.)

Cross-examination:

6599. Q. Can you name any voter, among all the employes engaged in the construction of that building, whom you can swear voted differently from what he would have voted in case he had not received employment there?—A. *I have not sufficient knowledge how any of the men employed on that building voted to swear positively as to how they voted.*

6600. Q. Can you name a single employe whom you have good reason to suppose voted differently, by reason of that employment, from what he otherwise would have done?—A. I have reason to *believe* that one William Kelly, I think is his name, voted differently by reason of his working upon that building, from what he would had he not been at work on the building.

6601. Q. Name another such employe.—A. I do not now call to mind the name of any other employe whom I have as good reason to believe voted differently last fall from his conviction as in case of William Kelly.

6602. Q. Have you any *information* that leads you to *believe* that the vote of William Kelly was changed by any undue or improper influence? And, if you have, you may state what that information was.—A. I have knowledge and information to lead me to believe that he voted in the manner he did from the fact of his laboring upon that building, *but the nature of that information I decline to give.*

6603. Q. Will you swear that his services were procured or were continued there under an agreement or understanding that he should vote for any particular candidate or any particular ticket?—A. I will not so swear.

6604. Q. I ask for the source of your information which bears you out in the statement you have made in reference to William Kelly's voting.—A. Partly from himself.

6605. Q. And partly from what other source, if any?—A. My impression is that my other source of information was from John Radigan.

6606. Q. Do you now decline to state the nature of that information, or what it was?—A. I do.

6615. Q. You were present occasionally, and saw the work going on in Kingsford's new building last fall, did you not?—A. I was, occasionally.

6618. Q. Can you name an employe in that whole force whose vote you know to have been changed by his employment there?—A. I do not know positively, at least positively enough to swear to it, how these employes voted, but can only judge from appearances and *hearsay* as to how they voted.

6619. Q. Can you give the name of any employe on that force whom you have satisfactory reasons for supposing voted otherwise than what he would by reason of such employment?—A. I have; will name Mr. Cody.

6623. Q. Name another whose vote you think was changed by such employment.—A. I think Mr. Brennan's was—Michael, I think; but am not sure about that. It was an elderly gentleman.

6626. Q. Are the three men, Kelly, Cody, and Brennan, men of good reputation for truth and veracity?

(Objected to as incompetent and immaterial, and nothing more than a cross-examination upon a cross-examination. Notaries differ; Coon for admission.)

A. I decline to answer under the notice.

6629. Q. Do you know what proportion of the employes upon Kingsford's new building were Republicans and what Democrats and Greenbackers?—A. I do not.

6630. Q. Have you any knowledge of the politics of those men sufficient to enable you to express an intelligent opinion as to how many votes were changed, if any, by reason of their employment in the construction of those buildings?

(Objected to as being a repetition, the witness having already answered.)

A. I have no knowledge of how many votes were changed by reason of their employment on those two buildings.

(See Record, pages 1025, 1226, and 1027.)

Very little, if any, importance can be attached to the evidence so rendered by Mr. Judson, as the facts upon which he bases his *belief* and expresses the *opinion* that a large number of the employes engaged in the construction of said buildings were improperly influenced to vote for the contestee are very meager and unsatisfactory. He is only able to name *three* men, out of hundreds engaged in the erection of the buildings, who were, by reason of their employment, constrained to vote against their political convictions, and his entire information as to their so voting is purely *hearsay*, and must be excluded under the rule to which we have above referred, and in one instance he even refused to disclose the nature of the information acquired by him.

The contestant's purpose in introducing this evidence was to create the impression that Kingsford's object in constructing the building erected by him was to furnish employment to a large number of laborers, so as to enable him to control their votes at the approaching election in favor of the contestee, and that he did in that manner influence them to vote for the contestee against their will; but this charge has been completely refuted by the evidence produced by the contestee.

The contestant failed to call a single one of the many employes engaged in the construction of the buildings to prove that he or any other employe was in the slightest manner interfered with in the full enjoyment of his rights as a voter, and has introduced no evidence to justify his assertion that the buildings were constructed for the purpose of giving temporary employment to idle laborers on the eve of the election "with a view to exercise a control over their votes as an incident to their employment," as charged by the contestant. While, on the other hand, the contestee has clearly and satisfactorily shown the urgent necessity that existed for the construction of the buildings at that time, and has, in like manner, established by the evidence of a large number of persons *who voted for the contestant*, and who were engaged in the construction of the buildings, that men irrespective of their political views were employed to perform the labor, and that no effort was made by Kingsford, or any other person, to control or influence in any manner their votes. (See evidence of Thomas Gill, record, page 440; Patrick Kelly, pages 443 and 444; Charles S. Newell, pages 350, 351, and 352; James L. Quigg, pages 434, 435, and 436; Eugene Purple, pages 403 and 404; James Cosgriff, pages 573 and 574; and James Ratigan, pages 345, 346, and 347.)

In view of this evidence, we unhesitatingly say that the contestant has utterly failed to establish the truth of his charge.

IV.

The evidence introduced to sustain this charge, like that offered by the contestant in support of other charges, consists mainly of proof as to the existence of rumors that certain voters were bribed to vote for the contestee with money furnished for that purpose by the contestee. The contestant asserts that the contestee, a few days prior to the election, placed in the hands of an agent at Oswego \$1,500, to be used in bribing voters, and to sustain this assertion he relies on the evidence of Philo Bundy, Samuel B. Burchard, and George W. Woods.

Bundy testifies that Burchard informed him the day after the election

that contestee had brought to Oswego \$1,500, on the Saturday previous to the election, to use where it would do the most good (Record, page 36). He further says: "I did not believe it. I had no reason to. * * * I took a decided interest in the election of Mr. Duffy for Congress" (page —).

Burchard testifies that he did *not* make any such statement to Bundy, and that he does not know of contestee bringing to Oswego any money to be used directly or indirectly to advance his election at any time during the campaign (Record, page 79).

George W. Woods testifies that one Henry H. Lyman stated in his presence, a few days after the election, that the contestee had furnished \$1,500 to corrupt the voters of Oswego, and that it had been placed in the hands of Elias Root for that purpose (Record, pages 1058 and 1068).

Henry H. Lyman testifies that he did not make any such statement to Woods, or to any other person, and that he does not know anything as to contestee bringing money to Oswego and placing it in the hands of Root, or any other person, to aid in his election (Record, page —).

Elias Root testifies that there was no money placed in his hands by the contestee, or any other person, for the purpose of advancing contestee's election, and that he does not know of money being placed in the hands of any person in Oswego for any such purpose (Record, page —).

A direct conflict exists between these witnesses as to Burchard and Lyman, or either of them, making the statements imputed to them. It is not necessary for us to settle this conflict, as it is immaterial, so far as the merits of this case are involved, whether or not such statements were actually made by Burchard and Lyman, as they could in no manner, by such statements, affect the rights of the contestee, unless Burchard and Lyman were his agents, and authorized to speak for him, and there is no proof that any such agency ever existed. No competent evidence has been introduced showing or tending to show that the contestee furnished money for any such purpose. Bundy, who zealously supported the contestant, says that he does not believe that any such money was furnished by the contestee.

The only charges relating to the bribery of voters worthy of special notice are those relating to James Gilboy and ——— Hollingsworth.

Gilboy testifies that Walt. Cushman, then a student in the law office of the contestee, paid him, on the day of the election, fifty cents for voting for the contestee; that he went to the polls with Cushman, who gave him a paster with the contestee's name on, which was pasted on the regular Democratic ticket over the contestant's name, and that Cushman watched and saw him vote that ticket (Record, page 906).

G. G. Waldron testifies that Gilboy promised him the day before the election that he would vote for the contestee, and told the witness to watch him when he came to vote and give him a Mason ticket, and he would vote it, and that at the election the next day the witness gave him a Mason ticket, and went with him to the polls and saw him deposit it, and that Cushman was not present (Record, page 1139).

The evidence also shows that Gilboy, who is a hostler, is a man of bad habits, and has been in jail at different times, and that his character and reputation in the community where he resides is bad (Record, page 1135). It is conceded by the contestant that Gilboy, while testifying as a witness, was intoxicated. In view of the character of this witness—his intoxicated condition while testifying, the many glaring contradictory and inconsistent statements in his evidence, his self-confessed *infamy* in selling his vote, and the evidence of Waldron to which we

have alluded, we are not favorably impressed with the integrity or truthfulness of Gilboy, and must reject his evidence.

As to Hollingsworth, some doubt exists as to his qualifications as an elector, and it appears from the evidence that Hollingsworth, since the election, has stated to different persons that he received one dollar from Cushman for voting for the contestee, and that the money was paid to him after the election. Neither Cushman nor Hollingsworth were examined as witnesses. Conceding that Hollingsworth's statement is true, it does not affect the contestee, as the evidence fails to connect him in any manner with the transaction. A candidate cannot and ought not to be held responsible for all the imprudent and censurable acts of indiscreet friends, who, in the zealous advocacy of his election, resort to improper means of securing that result without his knowledge, and which he, if consulted, would condemn, unless the voters affected by such means are sufficient in number to change or render uncertain the result of the election.

V.

The evidence shows that fourteen students of Madison University, at the town of Hamilton, voted at this election (Record, page 316). Their names are D. B. Grant, B. J. Mix, J. L. Kneeland, J. G. Simons, M. L. Rugg, P. H. Moore, W. C. Phillips, W. W. Staples, A. M. Tuttle, C. H. Powers, Ira Hall, James Benedict, George Baker, A. G. Cole, and Hutchinson; and it is safe to infer from the evidence that all of them except one voted for the contestee (Record, pages 422 to 425). The contestant insists that these persons were not legal voters, and in support of his position directs our attention to the following provision of the constitution of the State of New York:

§ 3, ARTICLE 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his *presence or absence* while employed in the service of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or of the high seas, nor while a student of any seminary of learning, nor while kept in any almshouse or other asylum at public expense; nor while confined in any public prison.

Prior to the election in controversy a case was tried before Judge Wallace, of the United States district court, at Syracuse, N. Y., wherein a student at St. Bonaventure College, at Allegany, Cattaraugus County, New York, was indicted for illegal voting. Judge Wallace, in referring to the provisions of the constitution above cited, said:

Of course, the defendant was not a resident of both Orleans County and Cattaraugus County; he could reside in one county only for the purpose of exercising the right of suffrage. It appears indisputably that until September, 1875, he was a resident of Orleans County, and was a legal voter there. Now, the presumption of the law is that he continued to be a resident of that county, in the absence of evidence to the contrary, and the whole case may therefore be determined by ascertaining whether or not he acquired a new residence in Cattaraugus County—whether the evidence adduced overcomes the legal presumption to which I have referred. And it is at this point that the bearing and effect of the constitutional provision found in section three of article two of the constitution of this State becomes important. The language there employed is: "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student of any seminary of learning." By force of this language it is clear that defendant neither lost his residence in Orleans County nor gained a residence in Cattaraugus County merely because of his appearance in the latter place as a student at the college. Now, I do not pretend to instruct you that this constitutional provision precludes a student from acquiring a residence at the place where he is attending college, but the fact must be established by evidence other than that which is afforded by this sojourn in the place as a college student. A change of residence may be effected by a change of location with the intent to make that location a new home, as distinct from an intent to return

when some temporary purpose is accomplished. But a change of residence is not effected by intention alone, nor by change of location alone. Both must occur. And the intent must be evinced by consistent acts which denote an abandonment of the former residence, and the selection of a new home. You may find here that defendant never intended to return to Orleans County as his home, from his declarations and his conduct, but you must also find, before you can decide that he can acquire a new residence, that he intended to make Cattaraugus County his future home, and evinced that intent by corroborative acts. It therefore follows, if the evidence does not disclose any circumstances which distinguish his case from that of the ordinary one of a college student, intent upon prosecuting his studies, but who has left the paternal roof to mark out his own future for himself, it fails to meet the requirements of the law for the acquisition of a new residence, and the main question in the case will turn upon your conclusion upon the subordinate one. In conclusion, it is appropriate to remind you that, although the defendant may have conscientiously believed he had acquired a residence in Cattaraugus County, and was exercising a lawful right in voting there, his violation of the law is not thereby purged of the criminal intent which is the essential element of every crime. Every citizen is presumed and required to know the law. (See Record, page. —)

The evidence in this case shows that it has been customary for many years for the committees of the different political parties in Madison County to secure the attendance of these students of Madison University at the polls as voters (see Record, page 714). Some years as high as 75 students or more of the university voted at the village of Hamilton (Record, page 710), while the number who voted at the election in dispute was 14. One of the witnesses, Edward D. Van Slyck, testifies that the reduction in number at the election in controversy was due to Judge Wallace's opinion, above set forth, "which was taken as the guide and became the decisive ground upon which they claimed their right to vote," and that the contestee advised the students "that no one should vote unless he was perfectly satisfied that he was a legal voter, and advised them to keep strictly within Wallace's opinion." (See Record, page 710.)

Thomas Beal, one of the contestant's witnesses, was examined as to the residence and qualifications as electors of those students who voted at the election, and by his evidence it appears that 6 of the 14 that voted are married men and have resided at Hamilton for many years, and the witness is unable to state that any one of these 14 students had a residence elsewhere than at that village. (See Record, pages 319 to 321.) The students who voted were allowed to do so after being first sworn as to their qualifications as electors. (Record, page 316.) Although the burden of proving that these students were not legal voters devolved on the contestant, he has introduced no proof establishing or tending to establish that fact. He relies alone on the fact that they were then students at the university, which of itself creates no presumption that they were not legal voters of the town of Hamilton. The record shows that subsequent to the election several of the students who so voted were arrested on a charge of illegal voting, and their examination on that charge occurred before C. M. Dennison, United States commissioner, and resulted in their discharge. The following is the opinion rendered in the case by Commissioner Dennison:

United States of America against Pitt H. Moore; same against Brenett J. Mix; same against Levwick L. Kneeland, by C. M. Dennison, commissioner.

In these cases the defendants are charged with illegal voting at the last general election for Representative in Congress, and the cases are all substantially alike and may all be decided together. The evidence in these cases is undisputed and in no way conflicting, and shows that all of the defendants are students of some one of the departments of Madison University; that each had entirely and absolutely severed his connection with his former home, and supported himself by his own earnings, together with what aid he received from the beneficiary funds of the institution, and had gone to the village of Hamilton with the intention of making that his only home and residence, at least while in attendance at the university, and had so remained there the

quired by law to become a voter. In my opinion there could be no question at each of these young men would have been a legal voter at Hamilton had he here in the manner in which he did and performed the same acts which he did, not for the fact that they came within the classes of persons enumerated in 2, section 3, of the constitution of this State, and that the determination of these rests wholly upon the meaning of that section. It is claimed by the prosecution this section of the constitution is prohibitory, and that no person can possibly reside while a student of any seminary of learning. I cannot concur in this. This section of the amended constitution is the same as in the constitution of 1847, and, substantially, in my opinion, a simple enunciation of the common law, and not rather as a protection than as a prohibition, and is not intended to prevent persons from changing their place of residence and gaining a new voting place, but rather to protect persons who shall leave their actual permanent residence with an intention of going temporarily in some of the occupations or callings section enumerated, and at the completion of said purpose to return to their residence, and being thereby disfranchised during such absence. In my opinion this section of the constitution is not intended to disfranchise any citizen of the State of New York, but rather to protect every citizen of the State in the full exercise of the right of elective franchise. It is further claimed by the prosecution that these cases are parallel and at all fours with the case of "The United States against Hays," decided by Judge Wallace January, 1878. The defendants in these cases took the opinion of Judge Wallace in that case and examined the same carefully and sought legal advice thereon before offering to vote, and upon such examination and advice concluded that their cases did not come within that decision, and that there was nothing contained therein which would prevent their voting, and they all voted after having taken the oaths required by law. These defendants are all candidates for the ministry, and, in my judgment, acted conscientiously and with great care, and in strict obedience to the law, were entirely correct in their conclusion that they were legal voters of the place where they voted. It is ordered that each of the defendants be, and are, discharged. (See Record, pages 1170 and 1171.)

The evidence is wholly insufficient to authorize us to determine that the defendants who so voted were illegal voters.

In conclusion, we are, for the reasons stated, fully satisfied that the defendant is not entitled to the seat in controversy, and therefore recommend the passage of the following resolutions:

Resolved, That Sebastian Duffy is not entitled to a seat in the Forty-sixth Congress as a Representative from the twenty-fourth Congressional district of New York.

Resolved, That Joseph Mason is entitled to a seat in the Forty-sixth Congress as a Representative from the twenty-fourth Congressional district of New York.

WALPOLE G. COLERICK.
WM. M. SPRINGER.
SAM'L L. SAWYER.
J. B. WEAVER.
W. A. FIELD.
W. H. CALKINS.
J. H. CAMP.
J. WARREN KEIFER.
E. OVERTON, JR.
VAN H. MANNING.
EMORY SPEER.
R. F. ARMFIELD.

concur in the conclusion of the foregoing report and in the resolutions recommended.

E. C. PHISTER.
F. E. BELTZHOVER.

JAMES E. O'HARA vs. WILLIAM H. KITCHIN.

SECOND CONGRESSIONAL DISTRICT OF NORTH CAROLINA.

Contestant claims in his notice of contest that votes were rejected by the county canvassing boards in several counties. In the record there appears no return of service of notice on contestee. The contestee in his answer says "no lawful or sufficient notice of said contest has been served upon him * * * within the time prescribed by law," viz, "within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same."

Held, That it cannot be determined from the record when the result of the election was "determined by the officer or board of canvassers authorized by law to determine the same."

Held, That all testimony should be taken within the time prescribed by statute; and the practice of parties, by agreement between themselves, to postpone the time of taking testimony, without any previous authority of the House, is indefensible. If parties agree to an extension of time, the agreement should be in writing, and application be at once made to the House, when in session, for a ratification of such agreement.

The contest is dismissed because the evidence was not taken in time.

Reported to the House February 17, 1881, and ordered printed, and no further action taken.

FEBRUARY 17, 1881.—Mr. FIELD, from the Committee on Elections submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested-election, case of James E. O'Hara, contestant, against William H. Kitchin, contestee, from the second Congressional district of North Carolina, respectfully report as follows :

This contest arises out of an election held on the 5th day of November, 1878, for a Representative in the Forty-sixth Congress of the United States from the second Congressional district of North Carolina.

In his notice of contest the contestant complains of the rejection of votes by the county canvassing boards in the counties of Edgecombe, Halifax, Craven, and Lenoir. In the record there appears no return of service of the notice of contest on the contestee; but the contestee, some time in April, 1879, served his answer to the notice of contest upon the contestant, in which, among other things, he says—

That he ought not to be called upon to answer said notice of contest, because he says no lawful or sufficient notice of said contest has been served upon him by the said contestant, or by any one for him, in the manner or within the time prescribed by law. Nevertheless, this contestant, saving and reserving to himself all benefit of the matters and things stated above, and fully relying on the same, yet for answer to the said notice of contest, if the same shall be required of him, saith, &c.

It was stated orally by the contestant that he sent seasonably to the contestee a copy of his notice of contest, and was informed by the mes-

senger that he had left the same at the place of business of the contestee, but there is no affidavit or deposition of the messenger. It was stated orally by the contestee that he never received any such notice of contest, and had no knowledge that any such had been left for him until he was informed by the clerk of the Committee on Elections, during the extra session of Congress, that such notice of contest had, pursuant to the order of the House, been transmitted to the Committee on Elections by the Clerk of the House.

The contestee, on or about the 29th of April, 1879, prepared his answer as aforesaid. The contestee, at the opening before the committee, insisted upon his objection that the contest ought to be dismissed on account of the want of any proper service of the notice of contest.

Section 105 of the Revised Statutes of the United States provides :

Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest.

There is no evidence in the case that enables the committee to decide when the result of this election was determined by the officers or board of canvassers authorized by law to determine it. It appears by the statement of the parties that certain legal proceedings were had, a report of which was printed in the 80th North Carolina Reports, page 603 (*O'Hara vs. Powell*), and a writ of mandamus was obtained against certain county canvassing boards. It was said that by an appeal to the supreme court of the State of North Carolina the final decision of the application for mandamus was postponed until after the expiration of a restraining order which had been obtained against the State canvassing board, forbidding them from canvassing the returns from this second Congressional district. These proceedings make it uncertain, as a matter of conjecture, when the result of the election was determined, and there is no evidence whatever before the committee when in fact it was determined, and the committee do not know from what time the thirty days within which the notice of contest must be given began to run. The contestant, therefore, has not proved that he served his notice of contest within thirty days after the result of the election was determined, or that he ever served it at all.

A copy of the answer of the contestee was served upon the contestant on the 29th day of April, 1879.

Section 107 of the Revised Statutes is as follows :

In all contested-election cases the time allowed for taking testimony shall be ninety days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first forty days, the returned member during the succeeding forty days, and the contestant may take testimony in rebuttal during the remaining ten days of said period.

Section 2, chapter 119, of the statutes of 1875 is as follows :

That section 107 of the Revised Statutes of the United States shall be construed as requiring all testimony in cases of contested election to be taken within ninety days from the day on which the answer of the returned member is served upon the contestant.

In this case the earliest testimony taken by the contestant was taken on the 7th day of November, 1879, which was 194 days from the day on which the answer of the returned member was served upon the contestant; and the contestee objects now, as he objected through his counsel at the time the testimony was taken, that the ninety days for taking testimony had expired before the testimony was taken.

The contestant sets up an oral argument, as he alleges, to the effect that within the ninety days prescribed by law, the exact time of which he does not fix, he and the contestee agreed—

That as to the matter alleged in contestant's complaint as to the votes thrown out and not counted for contestant in the counties of Edgecombe and Craven, it would not be necessary to take evidence, as he, said Kitchin, agreed to make a case without taking testimony.

And on the 23d day of April, 1880, he filed an affidavit to that effect, as a foundation for a motion that the time for taking testimony be extended. The contestee denies that any such oral agreement was made, and filed his affidavit on the 26th day of May, 1880, to the effect that the only conversation he ever had with the contestant on the subject—

Was an interview that took place at affiant's place of business in the latter part of August, A. D. 1879, long after contestant's time for taking testimony had expired; and in that interview contestant stopped not more than two or three minutes, and said to this affiant that Mr. Day, his attorney, had told him to stop and see affiant, and see if we could not agree upon a time to take evidence, upon which affiant replied, "No; we cannot agree upon anything; if you expect to oust me from my seat in Congress, you must proceed strictly according to the United States statutes;" to which contestant replied, "All right; I am not in a hurry about it, for I do not expect to get my seat until about the 3d of March, 1881."

The contestee also filed the affidavits of Mr. P. H. Whitmore and I. Rothchild, to the effect that they were each present during the month of August, in the store of Kitchin and Rothchild, when said Kitchin and O'Hara had some conversation relative to the taking of testimony to be used in the case which was then pending between them before the Congress of the United States, and that each heard the said Kitchin tell the said O'Hara that if he wished to get him out of his seat, he must proceed according to law, and that O'Hara said in reply, "All right."

These affidavits were filed before the Committee on Elections, to enable the committee to consider the motion of the contestant that his time be extended for taking testimony, but the Committee on Elections took no action on this application, and the time for taking testimony has never been extended by the House of Representatives.

One purpose of the statutes of the United States, above cited, was to compel parties to a contested election seasonably to prepare their case, so that it might have an early determination by the House. The practice which has arisen of permitting parties by agreement between themselves to postpone the time of taking testimony without any previous authority of the House of Representatives, or any express ratification of it by the House, is an indefensible one, and has, in the opinion of the committee, been carried too far. In many cases it seems to be considered by the parties that they can do as they please about it; that the contest is a merely private one, and concerns no one but themselves. In many States the parties are in the habit of making agreements postponing the time of taking testimony as fully as if the contest were a private suit, and this practice has in some cases received the implied assent of the House of Representatives. It may happen, indeed, that from unforeseen causes an extension of time may be necessary, and the House of Representatives may not be in session, and therefore no previous application can be made to it, but in such cases, if the parties agree to an extension of time, the agreement should be in writing, signed by the parties or their attorneys, and application should be at once made to the House of Representatives, when in session, for a ratification of such agreement.

The evils resulting from permitting the parties, at their own convenience, to regulate the time of taking testimony, without regard to the

statutes or the public interest, are too serious and obvious to require comment. In any case, if such agreements are to be regarded, they should be in writing, and signed by the parties or their attorneys. This is the practice of courts generally, and is founded on sound reasons. If oral agreements are recognized, then if they are denied by either of the parties at the hearing, testimony must be taken, and this collateral issue be first determined, and as the decision may be such as one of the parties did not expect, he may be put to the greatest disadvantage after the testimony on the merits of the case has been all taken. The misunderstandings that often honestly arise from oral agreements are alone sufficient to justify courts in insisting that none but written agreements will, if questioned, be recognized. We think it of great importance in election cases that parties should understand absolutely that all agreements in contravention of the statutes of the United States, in regard to the taking of testimony, to be considered at all, should be in writing, properly signed, and made a part of the record itself. Even when the policy of the law requires that they should not be regarded unless it appears that they were *bona fide* entered into for an adequate and reasonable cause to be determined by the House of Representatives, either before or at the time of deciding the election case.

On this ground the committee decline to determine on the affidavits the question whether or not any such oral agreement as the contestant sets up was ever made, and consider the case as if there were no such agreement. The committee might, indeed, in a case where testimony had been taken out of time, but with full opportunity to the other party to cross-examine the witnesses and exhibit evidence in reply, and where it was evident that this had been fully done, recommend to the House, if they find sufficient reason therefor, that the testimony be considered as if taken in time; but such is not this case, and the only alleged ground for the delay in this case is that the dwelling-house of Mr. O'Hara was destroyed by fire, as well as all memoranda, facts, and information in writing that he had procured necessary to be used in the contest. The time when the dwelling-house was destroyed by fire is not stated in any of the papers, but it is said to have happened in March, 1879, and before the answer of the contestee was served on the contestant. This does not seem to the committee a sufficient ground for admitting testimony taken one hundred and ninety-four days after the service of the answer.

The committee, therefore, are of opinion that this contest should be dismissed, on the ground that the testimony was not taken in time. If the testimony is considered, which the committee think should not be done, the committee think it insufficient to establish the contestant's case. The only depositions are the depositions of Albert Hill, Jacob D. Hill, R. J. Lewis, J. F. Brinkley, John C. Williams, W. A. Duggan, and W. M. Pippen. The depositions of all but Mr. Duggan and Mr. Pippen were taken on the 7th day of November, 1879, after notice to Mr. Kitchin, who appeared by counsel, and objected to the taking on the ground that more than ninety days had elapsed since the service of the answer.

The depositions of Mr. Duggan and Mr. Pippen, taken on the 17th day of November, 1879, without any notice whatever, so far as it appears, having been given to Mr. Kitchin, and without any appearance by him to the taking, ought to be excluded on the additional ground of want of notice, a defect which does not appear in any sense to have been waived. The depositions of all these persons, except Messrs. Duggan and Pippen, do not show anything that the committee can apply to this case. In this case the return of the canvass of the State canvassing board is

not given, and the committee cannot ascertain what was included or what was excluded by that board, and they have nothing before them to which they can apply any corrections which the testimony might convince them ought to be made.

The deposition of Mr. Duggan is to the effect that he is clerk of the superior court of Edgecombe County, and that certified copies, marked from A to N, both inclusive, were made from the original returns of election for a Representative in Congress from the second Congressional district of the State of North Carolina, on file in his office, and are true copies. These copies purport to be copies of the returns of the precinct canvassing boards of Edgecombe County, in 18 precincts, in all of which Mr. O'Hara received 3,153 votes, and Mr. Kitchin 1,231 votes, a plurality for Mr. O'Hara of 1,922; but the committee do not know, and cannot ascertain from the evidence, except as hereinafter stated, how many of these returns are included in the canvass and return made by the State canvassing board.

The deposition of Mr. Pippen, who was a member of the board of canvassers of the county of Edgecombe, in reply to a question, as follows: "State how many votes were excluded in the count made by the board of county canvassers from the returns as made by the judges of election in the several townships of the county to them, and why they were excluded," is as follows:

A. According to the returns of the judges of election, in township No. 1, precinct No. 3, James E. O'Hara received 127, W. H. Kitchin 13, and James H. Harris 3. These were excluded from the count by the county board of canvassers on account of the judges of election not being sworn.

In township No. 2 James E. O'Hara received 383 votes; W. H. Kitchin 114. These were excluded from the count by the county board of canvassers on account of the judges of election having been sworn by W. T. Cobb, one of the justices of the inferior court of said county of Edgecombe; it being the opinion of said board of canvassers that he had no right to administer the oath to them.

In township No. 5 W. H. Kitchin received 86 votes; James E. O'Hara 277 votes. These were excluded from the count by the county board of canvassers on account of the judges of election having been sworn by the registrar, who was not a justice of the peace, and had no other authority to administer save that of being registrar; it being the opinion of said board of canvassers that he had no right to administer the oath to them.

In township No. 7, precinct No. 1, W. H. Kitchin received 52 votes; James E. O'Hara 147 votes. These were excluded from the count by the county board of canvassers on account of the judges of election being sworn by a reputed justice of the peace from another county; the said board of canvassers being of the opinion that said justice had no right to administer the oath out of the county in which he was a justice as aforesaid to the judges of election.

In township No. 7, precinct No. 2, James E. O'Hara received 190 votes, and W. H. Kitchin received 30 votes. These were excluded from the count by the county board of canvassers on account of the judges of election not having been sworn, and vagueness and irregularity in the return.

In township No. 11 W. H. Kitchin received 56 votes and James E. O'Hara 144 votes. These were excluded by the county board of canvassers on account of the judges of election not having been sworn.

In township No. 14 W. H. Kitchin received 75 votes; James E. O'Hara 83 votes; James H. Harris 5; George W. Stanton 2 votes. These were not counted by the board of canvassers, as they were not returned until the day after the board of canvassers had adjourned.

This deposition shows that 1,351 votes for Mr. O'Hara and 426 votes for Mr. Kitchin were returned by the various precinct boards as cast for them, respectively, which were not counted by the county canvassing board, for the reasons respectively given. The plurality of Mr. O'Hara in these precinct returns is 925. The members of this committee in the report and views of the minority made to the House in the contested-election case of Jesse J. Yeates against Joseph J. Martin have expressed their opinions upon the law of the State of North Carolina applicable to the exclusion of the returned votes of precincts for

various reasons given by Mr. Pippen, and beg leave to refer the case to that case.

It has been stated that the number of votes received by Mr. Kitchin for Mr. O'Hara, as canvassed by the State canvassing board, is not in evidence. In the Congressional Directory, which is not evidence, Mr. Kitchin is put down as having received 10,804 votes, against 9,662 for Mr. O'Hara. If this statement be true as a statement of the votes as canvassed by the State board of North Carolina, it will be seen that Mr. Kitchin's plurality is 1,142, which is greater than the plurality of 5 received by Mr. O'Hara in the precincts mentioned in Edgecombe County, which were not counted by the county canvassing board. So if these were all admitted, upon which, for the reasons given in the case of *Yeates vs. Martin*, the committee do not agree, there is no reason to suppose that Mr. O'Hara would be elected; certainly there is no evidence that he would be. The burden of proof is on the contestant, and if all the testimony he has taken were admitted and considered, it is not sufficient to enable the committee to determine that he was an elected Representative.

No testimony has been taken by Mr. Kitchin whatever. He relied upon the objection that the time for taking testimony had expired when Mr. O'Hara began to take testimony. He had a right to rely on this objection at that time, and even if the House should determine to consider testimony in this case it would be unfair to Mr. Kitchin to do so after an opportunity were given him to take his testimony.

It is manifest from the notice of the contest and the answer that there are very grave and important questions in dispute in this election, and the matters in dispute concerned a far greater number of votes than the plurality of the sitting member, as given in the Congressional Directory; but on most of these questions there is no testimony whatever, one way or the other, and the little testimony that has been taken either has no significance at all, by reason of a want of testimony to connect it in any intelligent manner with the questions at issue or from some other cause, or the testimony taken which is intelligible and can be applied to the case does not establish the case of the contestant. The committee repeat that in their opinion the evidence in this case should be considered.

The committee therefore recommend the passage of the following resolutions:

Resolved, That James E. O'Hara is not entitled to a seat in this House as Representative in the Forty-sixth Congress from the second Congressional district of North Carolina.

Resolved, That William H. Kitchin is entitled to his seat in this House as Representative in the Forty-sixth Congress from the second Congressional district of the State of North Carolina.

EMORY SPEER.
W. A. FIELD.
JOHN H. CAMP.
W. G. COLERICK.
SAM'L L. SAWYER.
E. C. PHISTER.
E. OVERTON, JR.
W. H. CALKINS.
J. WARREN KEIFER.
F. E. BELTZHOVER.

Concur in the conclusion reached.

VAN H. MANNING.

JESSE J. YEATES vs. JOSEPH J. MARTIN.

FIRST CONGRESSIONAL DISTRICT OF NORTH CAROLINA.

The contestant alleges irregularities on the part of the election officers in rejecting certain polls; in not opening the polls at the proper time; in permitting a candidate to act as a registrar of election; and in counting tickets having a device on them, to wit, the words "Republican ticket."

Held, That it was illegal for a county returning-board in North Carolina to reject the returns from a township because the registrar of election delivered the returns to the returning-board instead of one of the judges of election, there being no fraud or irregularity in the conduct of the election shown.

Where it is clearly shown that at a precinct the election was not commenced until three hours after the time fixed by law the burden of proof is upon him who seeks to uphold the election to show that the result of the election was not affected by such irregularity.

Where, by law, four duly qualified inspectors of election are required at a precinct, and two persons only act, and they not properly qualified, the returns made by them are illegal and must be rejected.

Where the law of a State declares "that no person who is a candidate for any office shall be a registrar, judge, or inspector of an election," and it appears that one of the candidates (contestee) did for a time act as registrar at the election, the vote of the precinct must be rejected.

Under a statute which provides that "the ballots shall be on white paper, and may be printed or written or partly written and partly printed, and *shall be without device*," ballots having at the head the words "Republican ticket" must be rejected as being a device.

The House adopted the majority report January 29, 1881.

JANUARY 25, 1881.—Mr. SPEER, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the contested-election case of Jesse J. Yeates vs. Joseph J. Martin, from the first Congressional district of North Carolina, having had the same under consideration, beg leave to submit the following report:

After investigating the evidence in this case, in the light of the law applicable thereto, the committee respectfully submit the following report:

The election which is contested was held on the 5th day of November, 1878, to select a Representative for the Forty-sixth Congress from the first Congressional district of North Carolina. There were three candidates voted for—Respass, Independent Republican; Martin, Republican; and Yeates, Democrat.

The certificate of the office of the secretary of state will exhibit the following statement of the vote, as appears from the records in that

, from which it appears that Martin, contestee, received 51 more than Jesse J. Yates :

	Yeates.	Martin.	Repass.
† County.....	1,397	1,129	178
County.....	988	1,499	1
County.....	567	417	8
County.....	601	797	1
ok County.....	635	289	1
County.....	112	131	10
County.....	751	449	2
d County.....	905	1,029	
County.....	554	406	104
County.....	1,275	1,166	1
County.....	423	332	51
ank County.....	423	749	2
nons County.....	706	364	
County.....	1,935	1,806	8
County.....	332	240	2
gton County.....	490	882	61
Total.....	12,084	12,135	430

e returning-board of North Carolina, under the law of that State, sts of the governor of the State, the secretary of state, the attorney-al, and two State senators. The contestant objected to the legality e return of the county of Pasquotank, but the board held that it had dicial functions, and declined to consider the objection. To consider action of the returning-board is not material. The contestant in- that the county canvassing-board of Pasquotank County acted illy in rejecting the returns of Providence Township, where contest- eceived a majority of 39 votes. The action of this board seems to e been arbitrary and unjustifiable. There was no allegation of fraud egenerality in the conduct of the election. It was not disputed that eates received a majority of 39 votes at this precinct, but the can- ng-board for the county refused to count this return, because the trar of the election at Providence Township delivered the returns e county canvassing-board, when the friends of the contestee in- l that one of the judges of the election was the proper party to er those returns. The judges of the election in this case appointed e registrar, who carried up the returns and delivered them conformably e. To reject this return in this county was manifestly illegal, and eidence shows that the contestant is entitled to have 39 votes added e aggregate vote by the rectification of this error, this being con- nt's majority in that precinct. Indeed it is distinctly admitted by ontestee, on page 29 of his brief: "We do not regard this objec- ufficient to justify the rejection of the return." But he insists that e irregularities offset this gain of the contestant.

alludes specially to 135 votes claimed by him in Salem Township e were rejected by the county canvassing-board of that county, as es, for the same reason that the Providence returns were rejected. s were sustained by the facts it would be a more than sufficient , but the evidence falls far short of the allegation of the contestee. contended that this committee cannot reject the return because nly record in relation to it is as follows: "The votes as returned e board of canvassers from the precincts of Salem and Providence e not received and counted by the board, on account of informality, e therefore, not counted in the above statement." Signed B. F. Over- clerk of the county board of county canvassers.

The committee are not asked to reject this vote. It is already rejected by the proper authorities of the county, and this record furnishes a conclusion only. Aside from the fact that this board, in the absence of proof to the contrary, is entitled to the legal presumption that they have done their duty, the evidence discloses that there were other and vital informalities in the conduct of the election at that precinct, and there is no evidence whatever that the Salem vote was thrown out for the same reason as the Providence vote. The evidence of the contestee discloses that the polls were not opened until 12 o'clock, when the law is mandatory that they should be opened at 7; that before they were opened a large number of the voters of the precinct had left; that not more than half of the vote of the precinct was polled; that there was no registrar appointed, and that officers who held the election were not sworn.

It would be a violent assumption on the part of the committee to determine, in the absence of evidence to show the fact, that the vote of Salem Township was excluded for the same reason as the vote of Providence Township. It is quite clear, therefore, that the contestant is entitled to 39 votes for Providence Township, which were not allowed him, by this mistake of the county canvassing-board, and that contestee is entitled to nothing by reason of the rejection of the vote in Salem.

Your committee find that the irregularity of the election at the South Mills precinct throws the burden of proof upon the contestee to show that the result of the election was not affected by such irregularities. The proof shows very clearly that the election at this precinct was not commenced until three hours after the time fixed by law. McCrary on Elections lays down the general principle that if the deviation from regular hours is great, or even considerable, the presumption will be that it has affected the result, and the burden will be upon him who seeks to uphold the election to show affirmatively that it has not. (See McCrary, sec. 142.) Under the circumstances of this case we hold that the statute of North Carolina was so far disregarded as to vitiate the election at that precinct. The obvious purpose of the law is to give all voters an opportunity of casting their ballots.

Not only were the voters of that precinct deprived of two-fifths of the time allowed them by law, but the evidence discloses the fact that only about one-half of the vote of the precinct was polled at the election, the registration of that precinct being 764, and the vote cast only 390. There were then 374 voters living in that election district who did not vote. There is other authority going to establish the rule, which, the committee submits, should govern the count of this precinct, one a precedent found in Parson's Select Cases, volume 2, page 533. Where the law required the polls to be kept open until 10 p. m., and they were closed at 8 p. m., and it appeared that a full vote had not been cast, the court held the election to be void, and rejected the vote of the precinct, and the court decided as follows: "When an election is closed up one or two hours before the time, and it is manifest from the assessment, compared with the tally-papers, that there were numerous citizens who had not voted, and sufficient to have changed the result, we will, on this ground, set the election aside and pronounce it utterly void. So, also, if they be opened at a much later time than the time prescribed by law." (*Chadwick vs. Melvin*, Brightley's Election Cases, page 251.)

The soundness of this rule is indisputable; otherwise the door is opened for unmeasured frauds. Suppose, for instance, in a heated election, one party should by accident be prevented from polling its heavy vote until late in the afternoon, how easy would it be for a partisan

board of managers to defeat a man who otherwise would be the choice of the people. And, again, by refusing to open the polls at the time fixed by law in the forenoon of election day, and by delaying for three or four hours and systematically challenging the voters, and consuming as much time as possible with each voter, it would be easy to procrastinate, so that the hour of closing the polls should arrive and a large vote remain unpolled. But the committee is not confined to this objection to the legality of the vote at that precinct. The law requires four inspectors; there were only two.

It is insisted that a quorum of the board was sufficient, but two is not a quorum of four. The law requires that the inspectors should be sworn by some person authorized to administer an oath. They were not so sworn, but the sheriff, who was a mere intruder, and who made himself extremely officious on that occasion, presumed, outside of his limited powers, to administer the oath. The returns were signed and certified by persons who really were not election officials under the laws of North Carolina, and any other citizens present had the same right to bring them to receive votes and certify and send up a return.

It is insisted that one of the two inspectors who officiated was drunk, and unfit for the proper discharge of his duties, and it is noteworthy that with singular infelicity this gentleman was selected as the custodian in chief of the ballot-box. Bribery and intimidation are also insisted upon. The following extract from the evidence of John W. Barrington (record, page 33) is very pertinent in this connection:

Q. Were you told by any one prior to the day of the election that Mr. Kehoe, of the Republican executive committee of the State of North Carolina, was going to send down \$2,500 for electioneering purposes, and that a portion of that sum would be sent to you?—A. I was. I was told by Joseph J. Martin that Mr. Kehoe was going to send down \$2,500 to him (Martin) for electioneering purposes, and that he (Martin) would send some of it to me, and wanted me to do all I could with it in his interest.

But it is unnecessary for us to consider these questions as controlling when we have before us proof that the polls were not opened in compliance with law; that the requisite number of inspectors did not officiate; that those who did officiate were not sworn, and that but one-half of the registered vote at that precinct was polled. The committee therefore feel it obligatory upon them to reject entirely the vote of that precinct. The effect of this conclusion on the contest is to withdraw 64 votes from the certified vote of the contestee.

At Hamilton precinct likewise the contestee received a majority of 64 votes, and the contestant objects to the vote being counted, for the reason that the contestee acted as the registrar of the election. The law of North Carolina (Laws of 1876-'77, section 5, page 517) is mandatory on this subject. It declares "that no person who is a candidate for any office shall be a registrar, or judge, or inspector of an election." It is impossible for us to conceive of a provision more distinct in its terms, or one which is from necessity more mandatory than this. It is conceded by the contestee in his brief that he did for a time act as registrar at this precinct. In the interest of the purity of elections, the committee are compelled to reject the vote of a precinct where a practice so reprehensible has been adopted by the claimant of this honorable and responsible office. No man should be permitted to be judge in his own case or take advantage of his own illegal act. The evidence fails to show that the conduct of Mr. Martin was justifiable, fair, and impartial while acting in this important official character; and even if it should be held that this conduct on the part of the contestee did not of itself vitiate the result of the poll at that precinct, it will be admitted that the

contestee, who conducted his own election in this way, must have affirmatively shown that no illegal advantage was taken because of his action.

Vandemere precinct.—Here the polls were not opened until after 11 o'clock—over four hours after the time fixed by law. More than one-third of the voters at the precinct failed to vote, and a large number of voters left before the polls were opened, under the belief that no election would be held. By a parity of reasoning, the committee are compelled to apply the same rule to this case that they did to the South Mills precinct, and we have in this instance a practical illustration of the unfairness practiced by refusing to comply with the election law fixing the hour when the polls are to be opened. At this precinct Mr. Martin had a certified majority of 40 votes.

The contestee advances the claim that he is entitled to 108 votes not counted for him at Merry Hill precinct. The committee are of the opinion that under the stringent laws of North Carolina Mr. Martin is not entitled to these votes. The committee come to this conclusion with much reluctance. The reasoning, however, which leads to this conclusion is unanswerable, and under the statute leaves the committee no discretion.

One hundred and eight votes for Mr. Martin were thrown out and not counted, because they had on them the words "Republican ticket," at or near the head of the ticket, on the same side as the name of the candidate and office. They were thrown out on the ground that the words "Republican ticket" were a device within the meaning of the laws of North Carolina. Mr. Martin contends that these ballots should be counted for him.

Section 18, chapter 275, of the Laws of North Carolina, 1877, provides:

" * * The ballots shall be on white paper and may be printed or written, or partly written and partly printed, and shall be *without device*.

"SEC. 20. When the election shall be finished the registrars and judges of election in presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, reading aloud the names of the persons who shall appear on each ticket; and if there shall be two or more tickets rolled up together, or any ticket shall contain the names of more persons than such elector has a right to vote for, or *shall have a device upon it*, in either of these cases such tickets shall not be numbered in taking the ballots, but shall be void, and the said counting of votes shall be continued without adjournment until completed and the result thereof declared."

If these words constitute a device within the meaning of the law, the statute is plain that the ballots are void and are not to be counted. The counsel for the contestee, while denying that these words constitute a device, contends also that being on the inside of the ticket the case is within the decision of *D — vs. The State* (29 Indiana 308), and *Napier vs. Mahew* (35 Indiana, 275). See *McCrary*, section 404; *Neff vs. Shanks* (Forty-third Congress).

The statutes of Indiana provide:

"SEC. 18. When any person offers to vote the inspector shall pronounce his name in an audible voice, and if there be no objection he shall receive his ballot, and in the presence of the other judges put the same unopened into the ballot-box, when the name of such elector shall be again distinctly repeated by one of the other judges in the presence of the clerks.

"SEC. 23. That all ballots which may be cast at any election hereafter held in this State shall be written or printed on plain white paper, without any distinguishing marks or other embellishment thereon, except the name of the candidates and the office for which they are voted for, and inspectors of elections shall refuse all ballot offered of any other description: *Provided*, Nothing herein shall disqualify the vote from writing his own name on the back thereof."

The Indiana statute requires the inspector to put the ballot into the ballot-box *unopened*, and that the ballots shall be without any distinguishing marks or other embellishment thereon, and that the inspectors of election shall refuse all ballots offered of any other description. Under this statute the Indiana court held that the word "City union ticket" on the inside of the ballot, even if it be conceded that these words constitute a distinguishing mark, did not render the ballot void, and that the object of the act was accomplished by requiring all ballots to be uniform in external appearance. The same question was decided in *Stanley vs. Manley* (35 Indiana, 275) where the words were "Republican ticket" on the inside of the ballot. Under the

Indiana statute the court say that the statute "does not authorize the inspectors and judges to reject a ballot upon the discovery of such a mark or embellishment at the time of counting out the ballots which could not be seen by the inspectors at the time it was voted." The North Carolina statute is express that the ballots shall be without device, and that if the ticket shall have a device upon it, it shall not be numbered in taking the ballots, but shall be void. This difference in the statutes renders the Indiana decisions inapplicable, and the sole question is, are the words "Republican ticket" on the inside of a ballot a device within the meaning of the North Carolina statute. With the policy of the statute we have nothing to do; one purpose of the statute may have been to prevent bystanders from knowing from observation how the voters voted. No statute can altogether prevent this; experts can easily distinguish between different kinds of white papers, and the printing of the ballots of the opposite parties would ordinarily be done at different printing offices with different type and ink, and the arrangement of the names of the persons and of the office, the punctuation, and the place on the ticket of the printed matter would ordinarily be different and apparent to a well-trained eye. The intention of the statute could be easily evaded if it did not also prescribe the size of the ticket and the size of the type, which the North Carolina statute has not done. Still the statute, such as it is, must be enforced, even if some provisions have been omitted that are necessary completely to appreciate its intention.

Another purpose of the statute may have been to compel, as far as is possible, the voter to select the persons he votes for independently of any contrivances on the ticket calculated to inform or misinform him of the opinions of the persons voted for, because devices are often contrived to mislead. Either way, we think that words prominently printed on a ticket and intended to designate or describe it, and which have a distinct meaning in themselves, such as, if untrue, might mislead the voter, and whether true or untrue would render the ticket easily distinguishable, must be held to be a device within the meaning of the law. (McCrary on Elections, section 401.) These votes were rejected by the State authorities, and we think rightfully.

The committee cannot sustain the claim that is made by the contestee, that 164 votes should be counted for him at the Goose Nest precinct, which were rejected by the managers of the election there. It is not denied by the contestee that all who were denied the right of voting at this precinct were registered in Hamilton precinct, which was another precinct in the same county. The law of North Carolina requires that a voter who is registered in one precinct cannot vote at another without producing a certificate of the erasure of his name from the registration list of the precinct where he is registered. The reason for this rule is obvious. If voters are registered in two or more precincts in the same county, the entire object of the registration law is avoided, for they might vote in every precinct where they are registered.

Where a voter admittedly registered at Hamilton precinct presents himself at Goose Nest precinct for the purpose of voting, he cannot vote, unless there is this required evidence of honest registration. That this construction was placed upon the law of North Carolina by all of those who were careful enough to guard their rights is evidenced by the fact that there were 52 votes cast for the contestee at this precinct who produced the certificates of erasure under the statute. Proclamation was made at a public meeting of the political parties on the day previous to the election that it was necessary to procure these certificates; that all who applied in person or by proxy, whether Democrats or Republicans, received the certificates. Every man who voted at Goose Nest precinct was registered, and produced the requisite certificate of erasure of his name from Hamilton precinct. A full board of inspectors, Democrats and Republicans, determined before the election that these certificates were essential. The full board of election judges, Democrats and Republicans, were agreed to reject these votes. Before, however, the committee can set aside the action of the authorities of the State of North Carolina, they must have submitted to them better evidence

than that which the contestee has offered that 154 votes were rejected at that precinct.

It was incumbent on the contestee to support this claim by the best evidence of which the nature of the case would admit. So far from this being true, the contestee has offered testimony of one William A. Johnson, a by-stander, who says that he personally saw 160 ballots that were offered for J. J. Martin, and which were rejected by the judges of election, and six of whom were afterwards permitted to vote. Not one of these 154 votes was called, although they were all residents of that precinct. The witness, W. A. Johnson, tells a very incredible story, and it is but reasonable that had 154 voters been refused the right of voting at that precinct, the contestee would have offered evidence sufficient to satisfy the committee of the fact; but the committee will not interfere with the construction of the laws of North Carolina as applicable to this precinct, and therefore decline to accede to the demand of the contestee and count 154 votes for him. None of these voters are identified by evidence sufficient.

From the foregoing conclusions we have the following result:

The returned vote for Mr. Martin, the contestee, was.....	12, 13
From which deduct his majority in South Mills.....	64
In Hamilton	64
In Vandemere.....	40
	16
Leaving his true vote.....	11, 96
The returned vote for Mr. Yeates, the contestant, was.....	12, 08
To which should be added his majority in Providence Township.....	3
Making his true vote in the district.....	12, 11
From which deduct the true vote of Mr. Martin.....	11, 96
Which shows majority for Mr. Yeates	15

The conclusion of the committee, therefore, is embodied in the following resolutions:

Resolved, That Joseph J. Martin was not elected, and is not entitled to a seat in this House as a member of the Forty-sixth Congress, from the first Congressional district of North Carolina.

Resolved, That Jesse J. Yeates was elected, and is entitled to a seat in this House as a member of the Forty-sixth Congress, from the first Congressional district of North Carolina.

EMORY SPEER.
F. E. BELTZHOOVER.
E. C. PHISTER.
VAN H. MANNING.
WILLIAM M. SPRINGER.

We concur in the result declared in the above report, but do not think that the vote of Hamilton precinct should be excluded.

W. G. COLERICK.
SAM'L L. SAWYER.

VIEWS OF THE MINORITY.

Mr. FIELD, from the committee, presents the views of the minority in this case, as follows:

The contest in this case arises out of an election held on the 5th day of November, 1878, for a Representative in Congress from the first Congressional district of North Carolina.

The abstract of votes cast at this election, duly certified from the office of secretary of state, and found on page 41 (Record) is as follows:

Abstract of votes cast at an election held for members of the Forty-sixth Congress of the United States on Tuesday, November 5, 1878, in the State of North Carolina.

FOR CONGRESS—FIRST DISTRICT.

Counties.	Registration.			Jesse J. Yeates.	Joseph J. Martin.	J. B. Reespe.
	White.	Colored.	Aggregate.			
Beaufort.....				1,397	1,139	178
Bertie.....				988	1,490	1
Camden.....				567	417	8
Chowan.....				601	797	1
Currituck.....				635	289	1
Dare.....				112	131	1
Gates.....				751	449	.....
Hertford.....				905	1,029	.....
Hyde.....				554	408	194
Martin.....				1,275	1,168	1
Pamlico.....				423	332	51
Pasquotank.....				423	749	2
Perquimons.....				706	864	.....
Pitt.....				1,985	1,806	8
Tyrrell.....				332	240	2
Washington.....				480	892	61
Total.....				12,084	12,185	430

A general election for State officers had been held in August preceding this election in November, and the November election was for Representatives in Congress only.

The contestant attacks the election held at South Mills precinct, in Camden County; at Vandemere precinct, in Pamlico County, and Hamilton precinct, in Martin County, and the action of the canvassing-board of Pasquotank in refusing to count the votes of Providence Township, in Pasquotank County.

Whatever larger claim the contestant made in his notice of contest, his proofs have been confined to these precincts and township, and to rebutting the claims made on the part of the contestee that additional votes should be counted for the contestee at Merry Hills precinct, in Bertie County; at Salem precinct, in Pasquotank County, and at Goose Nest precinct, in Martin County.

SOUTH MILLS PRECINCT.

At this precinct the contestee received a majority of 64 votes. The contestant objects to counting these votes for several reasons, which will be considered in their order.

The first reason alleged is that the polls were not opened as early in the morning as the statutes of North Carolina require.

Section 16 of chapter 275 of the act of North Carolina of 1877 provides that "the polls shall be opened on the day of election from 7 o'clock in the morning until sunset of the same day, and no longer."

Sawyer, the sheriff, page 30, swears that the polls were opened "about 9 o'clock, and might have been more, but I cannot say."

Barrington, page 31, swears: "When I left here after coming the second time, I think it was then between 9 and 10 o'clock, and the polls were not then opened."

Spence, page 34: "My idea is that it was as late as 10 o'clock" when the polls were opened.

Gregory, page 35: "The sun was at least an hour high" when the polls were opened.

Spence, page 36, acted in the capacity of registrar, and swears that "it was somewhere about 15 minutes after 9 o'clock" when the polls were opened.

It may be assumed that it was between 9 and 10 o'clock when the polls were opened.

The reason of the delay in the opening of the polls is by different witnesses stated as follows:

John E. Spence, registrar, page 37: "There were three reasons why they," that is, the polls, "were not opened earlier: first, the inspectors were not all present; second, there was no one present to qualify them; third, we had no house in which to hold the election."

Section 9, chapter 275, acts of North Carolina, 1877, is:

The board of justices of the peace for each county, on or before the first Monday of the month next preceding the month in which each election is held, shall appoint four judges or inspectors of elections, two of whom shall be of a different political party, when possible, from the registrars, at each place of holding election in their respective counties. The said judges of election shall attend to the places for which they are severally appointed, on the day of election, and they, together with the registrars for such precincts or townships, who shall attend with the registration books, after being sworn by some justice of the peace, or other person authorized to administer oaths, to conduct the election fairly and impartially according to the constitution and laws of the State, shall open the polls and superintend the same until the close of the election. * * *

SEC. 5. The board of justices of the peace of the several counties shall select, on or before the first Monday of the month preceding each election, one or more persons for each election precinct, who shall act as registrars of voters for such precinct. * * * If any registrar shall refuse or neglect to perform his duties, the justices of the peace for the township may remove him and appoint another in his place. * * *

Under the division entitled "Congressional elections," of said chapter 275, section 49, is the following: "The election," that is, the election for a Representative in Congress, "shall be held at the same times and places as are prescribed for holding elections for members of the general assembly, on the Tuesday next after the first Monday in November preceding the termination of each Congress, and shall be conducted by the sheriffs or by other persons appointed therefor in like manner as elections for members of the general assembly."

The registrar, John E. Spence, was a democrat (page 35). The regularly appointed inspectors were Joseph N. Spence, Wiley N. Gregory, Evan Overton, and James H. Sawyer; of these only Spence and Overton were present (page 36). Gregory, a voter at South Mills precinct, and a Democrat, who was present at the election and voted, declined to serve as inspector (page 35). The registrar also appointed John T. Pritchard one of the inspectors, who served for a short time, when Kenneth R. Sawyer took his place. Sawyer was not appointed, but it may fairly be inferred that he acted with the assent of the registrar (pages 36, 37). The registrar requested several others to fill the vacancy and they refused (page 37). The election was conducted by these three in-

spectors (page 36). To two at least of these three inspectors the oath was administered by the sheriff, who swears that he qualified these inspectors (page 30). The registrar was not sworn (page 36).

Section 9, chapter 275, acts of 1875, provides :

* * * If for any cause any person appointed judge of election shall fail to attend, the registrars of such township shall appoint some discreet person to act as such, who shall be of the same political party as the absent judge or judges.

The testimony of the sheriff, registrar, and of other witnesses to these facts is as follows :

Deposition of M. N. Sawyer.

M. N. SAWYER, being duly sworn, deposeth and saith as follows :

Question. What is your age and occupation ?—Answer. I am thirty-two years of age, and am sheriff of Camden County.

Q. Were you present at the election held for a member to represent the first Congressional district of North Carolina to the Forty-sixth Congress of the United States, held at South Mills, Camden County, North Carolina, on the 5th day of November, 1878 ?—A. I was.

Q. About what time do you think the polls were opened ?—A. About 9 o'clock, and might have been more, but I cannot say.

Q. Did you administer the oath to inspectors of the polls in South Mills Township on said day ?—A. I did to those who were present, but I left the polls at about 11 o'clock, and up to that time there were but two of the regularly appointed inspectors, besides the registrar, at the polls.

Q. Do you know whether any of the inspectors were qualified by the registrar of this township to hold said election or not ?—A. I do not.

Cross-examined by C. H. SPENCER, attorney for Joseph J. Martin, contestee :

Q. In what capacity did you administer the oath to the inspectors of the polls ?—A. As sheriff.

Q. Were you requested to do so by the inspectors of the election ?—A. I was by some one, but by whom I do not now remember.

Q. How many inspectors did you qualify ?—A. Three.

Q. Do you know the inspectors who were appointed by the board of justices to hold said election, and, if so, state what you know of their politics ?—A. I do ; two were Democrats and two were Republicans.

Q. Which were present at the opening of the polls ?—A. One Democrat and one Republican.

Q. Do you know of any reason why the polls were not opened at the proper hour ?—A. I do not.

Q. Was the registrar present when you arrived ; and, if so, state what you know of his politics ?—A. He was, and he is a Democrat.

M. N. SAWYER.

Deposition of Cary G. Spence.

CARY G. SPENCE, being duly sworn, deposeth and saith as follows :

Question. Are you a legal voter in South Mills Township ?—Answer. I am, and have been for about thirty-six years.

Q. Were you at the polls, and did you vote at the election held at South Mills on the 5th day of September, 1878, for a member to the Forty-sixth Congress of the United States ?—A. I was at the polls and voted.

Q. About what hour of the day were the polls opened ?—A. My idea is that it was as late as 10 o'clock.

Q. Do you know who were conducting the election when you voted ?—A. I know that Evan Overton and Kenneth R. Sawyer, and one other, whose name I do not remember, were conducting the election ; the registrar was also present when I voted. Kenneth R. Sawyer was called in while I was near the polls and took his seat as one of the judges.

Q. Did you or did you not see said Sawyer qualified or sworn in as one of the inspectors of the polls ?—A. I did not see him sworn in.

Q. Were you where you could have seen him if he had been sworn in ?—A. I was present at the polls before said Sawyer took his seat as inspector, and saw him when he took his seat, and saw no one administer the oath to him.

Cross-examined by attorney for Joseph J. Martin, contestee:

- Q. How old are you?—A. I am fifty-seven years old.
 Q. How many inspectors were conducting the election when you voted?—A. Three besides the registrar.
 Q. Do you know that Kenneth R. Sawyer was not duly sworn as an inspector?—A. I do not know it.
 Q. About what time of the day did you vote?—A. I think it was about 10 o'clock.
 Q. Had others voted before you?—A. Two or three.
 Q. Do you know any reason why the polls were not opened sooner?—A. Because all of the inspectors were not present.

C. G. SPENCE.

Deposition of Wiley N. Gregory.

WILEY N. GREGORY, being duly sworn, deposeth and saith as follows:

Question. Were you a qualified voter at South Mills precinct on the 5th day of November, 1878?—Answer. I was.

Q. Were you appointed one of the inspectors of the polls to hold said election, by the board of magistrates of Camden County, for a member to the Forty-sixth Congress of the United States from the first Congressional district of North Carolina?—A. I was, but did not serve.

Q. Do you know about what hour the polls were opened?—A. The sun was at least an hour high.

Q. Did you vote; and, if so, who was conducting the election when you voted?—A. I voted, and at that time those conducting the election were Evan Overton and Kenneth R. Sawyer, who was placed there in my stead, and I am not certain whether any one else was there or not, except the registrar.

Cross-examined by attorney for Joseph J. Martin, contestee:

Q. Who were the other inspectors appointed with you to hold said election, and what was their politics?—A. I think Joseph N. Spence and Evan Overton were appointed with me, but I am not certain. Myself and Joseph N. Spence, if appointed, who I think was, but am not certain, were Democrats, and Evan Overton was a Republican.

Q. Who was the registrar at said election, and what was his politics?—A. John E. Spence was registrar, and he is a Democrat.

Q. Where were you and the registrar residing at that time?—A. In the village at South Mills, where the election was held.

Q. Do you think the sun was more than an hour high?—A. I think it was at least an hour high, but cannot be definite; if anything, it might have been some later.

Q. Do you know of any reason why the polls were not opened earlier?—A. I do not.

Q. How many inspectors were conducting the election when you voted?—A. I am certain there were three.

Direct examination by contestant's attorney:

Q. Do you know how many election precincts there are in South Mills Township?—A. There is only one, and that one is held in the village of South Mills.

Q. Do you know how many acting justices of the peace there were in and for South Mills Township on the 5th day of November, 1878, and what were their names?—A. There were three; Benjamin F. Spence, John C. Tatem, and Peter C. Pearce.

WILEY N. GREGORY.

Deposition of John E. Spence.

JOHN E. SPENCE, being duly sworn, deposeth and saith as follows:

Question. What is your age and occupation?—Answer. I am thirty years of age, and am a merchant.

Q. Were you at the election precinct at South Mills, Camden County, North Carolina, on the 5th day of November, 1878, when an election was held for a Representative in the Forty-sixth Congress of the United States for the first Congressional district of North Carolina; and, if so, in what character were you there?—A. I was, and acted in the capacity of registrar.

Q. Do you know at what hour the polls were opened at said election?—A. It was somewhere about 15 minutes after 9 o'clock.

Q. Do you know who was appointed judges or inspectors of the polls at said precinct by the board of justices for said county; and, if so, who of them were present and were qualified at the opening of said polls?—A. I was told by the sheriff that

Joseph N. Spence, Wiley N. Gregory, Evan Overton, and James H. Sawyer, were appointed inspectors to conduct said election. Of these, Joseph N. Spence and Evan Overton were only present.

Q. Who qualified these inspectors?—A. M. N. Sawyer.

Q. Was any one appointed as judge or inspector to assist in conducting the election?—A. Yes; I appointed John T. Pritchard.

Q. Was the oath required to be administered to inspectors of the polls administered to him by you?—A. It was not.

Q. Did you appoint any one else as inspector during the day?—A. I did not.

Q. Were you, as registrar, together with those inspectors who were present at the opening of the polls, sworn, as required by law, by any one authorized to administer oaths?—A. I was not sworn at any time nor by any one as registrar.

Q. Were there four inspectors present through the day conducting the election?—

A. There were not but three inspectors conducting the election during the day.

Q. After the polls were opened, was the voting suspended at any time during the day?—A. Yes; the inspectors adjourned at 12 o'clock for about one hour, for dinner.

Q. What became of the box that contained the ballots during that time?—A. One of the inspectors who received the ballots, to wit, Evan Overton, took the box containing the ballots to a room about seventy-five yards distant from the polls, and locked it in and took possession of the key.

Owing to the late hour of the day, and by consent of attorneys for plaintiff and defendant, the taking of further testimony in this matter closed until 9 o'clock Friday, the 26th day of September, 1879.

Pursuant to adjournment, the commission reassembled this the 26th day of September, 1879, and the testimony of John E. Spence resumed.

Question. At what hour did the inspectors or judges again open the polls?—Answer. About 1 o'clock p. m.

Q. Who carried the box containing the ballots back to the place of voting?—A. Evan Overton, in company with myself and Kenneth R. Sawyer.

Q. After reassembling who conducted the polls as inspectors?—A. Evan Overton, Joseph N. Spence, and Kenneth R. Sawyer.

Q. By whom was Kenneth R. Sawyer appointed as an inspector?—A. By no one; he took the place of John T. Pritchard.

Q. Was Kenneth R. Sawyer sworn in as an inspector?—A. Not of my knowledge he was not.

Q. Did Kenneth R. Sawyer continue to act as an inspector until the polls were closed?—A. My impression is that he did.

Q. At what hour of the day were these polls closed?—A. At sunset.

Q. Was the box opened and the votes counted out immediately upon the termination of the voting?—A. It was.

Q. Did you complete the counting of the votes, and were the certificates of the result of the votes made out and signed on the 5th day of November, 1878?—A. Yes.

Q. Who signed said certificates?—A. Myself, Joseph N. Spence, and Evan Overton signed them; I do not know whether any one else signed them or not.

Q. What then became of the certificates of said returns?—A. They were placed in the hands of Joseph N. Spence, whom we selected as one of the county canvassers.

Q. Whom do you mean when you say *we*?—A. Myself and those of the inspectors who were present.

Q. Was the said Kenneth R. Sawyer present and did he aid in making the selection of Joseph N. Spence as the bearer of said certificates and a member of the board of county canvassers?—A. He was present, and it is my impression that he sanctioned the selection.

Cross-examined by attorney for Joseph J. Martin, contestee:

Q. What was the law under which this election was held in regard to the appointment of inspectors?—A. There should be four inspectors appointed, two of whom shall be members of a different political party from the registrar.

Q. What provision does the statute make in cases where any of the inspectors appointed fail to act?—A. The registrar is authorized to appoint others in their stead.

Q. What was the politics of the registrar for that election?—A. He was a Democrat.

Q. Did any of the managers appointed to conduct said election reside at or near the voting precincts?—A. The registrar and Wiley N. Gregory, one of the appointed inspectors, resided at the precinct.

Q. What was the politics of Wiley N. Gregory?—A. He was a Democrat.

Q. What reason, if any, can you assign why the polls were not opened earlier?—A. There were three reasons why they were not opened earlier: First, the inspectors were not all present; second, there was no one present to qualify them; third, we had no house in which to hold the election.

Q. Whose place was John T. Pritchard appointed to fill?—A. He was appointed to fill one of the vacancies.

Q. Why did not you, as registrar, supply the other vacancy by appointment?—A. I requested several to fill the vacancy and they refused.

Q. About what is the usual vote cast at South Mills precinct?—A. Between 450 and 500.

Q. Do you think that any who desired to vote at that election were deprived of doing so by reason of a want of time or opportunity during which the polls were opened?—A. I do not.

Q. Has it not always been customary here to adjourn the voting at noon for dinner?

(Question objected to by contestant's counsel.)

A. Sometimes they adjourn for dinner and sometimes they do not.

Q. What was the room used for in which the ballot-box was deposited during the adjournment for dinner?—A. It was an unoccupied room in my residence.

Q. Do you believe that the ballot-box was safe from interference during the adjournment for dinner?—A. I do.

(The above question objected to by contestant's counsel.)

JOHN E. SPENCE.

Deposition of John T. Pritchard.

JOHN T. PRITCHARD, being duly sworn, deposeth and saith as follows:

Question. What is your age?—Answer. I am thirty-four years old.

Q. What is your occupation?—A. I am a farmer.

Q. Are you a resident of Camden County, North Carolina?—A. I am, and have been all my life.

Q. Were you present at an election held on the 5th day of November, 1878, for a member to the Forty-sixth Congress of the United States from the first Congressional district of North Carolina in South Mills township?—A. I was.

Q. Who, as inspectors or judges at said election, conducted the same?—A. John E. Spence as registrar, and Evan Overton and Joseph N. Spence.

Q. Were you, or were you not, appointed one of the inspectors of the polls on said day?—A. I was not. I acted for a short time in registering a few names, but was not sworn in by any one.

Q. During the short time that you acted, was there any one else except those you have named above assisting as judge or inspector of the polls?—A. There was not.

JNO. T. PRITCHARD.

Deposition of K. R. Sawyer.

KENNETH R. SAWYER, being duly sworn, deposeth and saith as follows:

Question. What is your age and occupation?—Answer. I am thirty-six years old, and am a farmer.

Q. Were you present at an election held at South Mills, on the 5th day of November, 1878, for a Representative to the Forty-sixth Congress of the United States for the first Congressional district of North Carolina?—A. I was.

Q. Who, as the judges or inspectors, conducted said election?—A. John E. Spence, registrar; Evan Overton and Joseph N. Spence as inspectors.

Q. Did you, at any time, assist as inspector during the day, and, if so, under what circumstances?—A. I did; I assisted from about 10 o'clock until about a half an hour by sun.

Q. Were you sworn in by any one as the law requires?—A. I was not.

Q. Do you, of your own knowledge, know whether any one acted in your place after you ceased to act about a half an hour by sun?—A. I do not.

Q. Were you present at the counting of the votes?—A. I was not.

Q. During the time you were assisting in conducting the polls were there any votes challenged; and, if so, did you aid in deciding the legality or illegality of the same?—A. There were votes challenged, and I aided in the decision.

Q. Was Evan Overton, the receiver of the votes, under the influence of spirituous liquors during the day of the election?—A. I think he was.

Q. Were the polls closed at any time while you were acting in the capacity of inspector; and, if so, for what length of time?—A. They were closed about one hour for dinner.

Q. During that time what became of the box containing the ballots?—A. It was conveyed by Evan Overton, in company with myself and John E. Spence, to a room about seventy-five yards distant from the house where the balloting was conducted, and locked up by said Overton, who retained the key; and after an interval of about one hour it was taken back again by said Overton, and the voting resumed.

Q. Do you know of any voter or voters who were restrained from voting as they wished on the day of the election by reason of an undue and unlawful influence?—**A.** I do; James Miller and Edmond Sawyer told me on the day after election that they came to the polls to vote for Jesse J. Yeates, but were influenced to vote for Joseph J. Martin by insinuating language used by persons opposed to the election of Jesse J. Yeates. Of these, I think, they named two, to wit, Calvin Jones and Miles Knight.

KENNETH R. SAWYER.

Pritchard, who was appointed inspector, it seems, served for a short time, when Kenneth R. Sawyer took his place, who, according to the impression of the registrar, continued to act until the polls were closed, but, according to his own testimony, acted "from about 10 o'clock until about half an hour by sun," which is meant until half an hour of sunset. Both Pritchard and Sawyer swear that they were not sworn.

So far as the failure to open the polls seasonably is concerned, the fault, if there were one, was that of the Democratic registrar in not making seasonable provision for filling vacancies, and of the Democratic inspector who was present and declined to serve; but perhaps no one was at fault. That contestant relies upon section 142 of McCrary on Elections to the effect that if the deviations from the legal hours is great, the presumption is that it has affected the result, and the burden will be upon him who seeks to uphold the election to show affirmatively that it has not; but if the deviation is slight, then the presumption is that it has not affected the result.

When polls are closed *before* the hour prescribed by law, it may be that voters, without any fault of their own, are excluded from voting, because they have a right to expect that the polls will be kept open according to law: but when polls are not opened at the hour required by law, but are opened in season to give ample time to any voter to vote, and the delay has arisen from the fact that all the election officers have not attended, and some time is necessary to fill these vacancies according to law, and there has been no manifest abandonment of the attempt to hold an election, it is the duty of a voter to wait until the polls are opened. To hold otherwise, would invite a minority to bring about a delay in opening the polls, in order to invalidate the election. Such laws necessarily imply that some time must be taken on election day to fill such vacancies, and the voter has no right under either the Constitution and laws of the United States or of the State to deposit his ballot immediately on reaching the polling-place, and no rights of his are violated by compelling him to wait until the polls are opened in the lawful manner, provided there is time enough left for all to vote who desire to vote. No case has been shown to the committee in which a failure to open the polls at as early an hour as the law requires has been held to affect the election at such polling-place. The cases all relate to closing the polls too soon. This election at South Mills ought not to be declared void on account of the delay in opening the polls. The only direct injury proved by the delay in opening the polls is: John C. Linton, pages 30, 31, testifies that he waited for the opening of the polls; that his business called him away, and he left; he would have voted for Yeates. He had heard of one other person who would have voted for Yeates if the polls had been seasonably opened. The last is hearsay which we reject. We reject Linton because he should have waited if he desired to vote. John E. Spence, Democratic registrar, says, page 37:

Q. Do you think that any who desired to vote at that election were deprived of doing so by reason of a want of time or opportunity during which the polls were opened?—**A.** I do not.

The contestant contends that the election was not held by the proper officers and that they were not sworn, and that these defects invalidate the election at this precinct. The contestee objects, that this is not open to the contestant under his notice and section 105 of the Revised Statutes, which requires "that the notice shall specify particularly the grounds upon which the contestant relies in the contest," and section 121, "that the testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer," &c.

The specifications in the notice of contest in regard to South Mills is this:

Specification 1.—That the polls were not opened at South Mills precinct, in the county of Camden, in said district, on said election day until between the hours of 9 o'clock a. m. and 12 o'clock m., so that a large number of persons desiring to vote at said election were prevented so doing; that a large number of votes were counted at said precinct and returned at said precinct on said day of election in excess of the number shown to have voted by the poll and register list kept by the judges of election, to wit, thirty persons; that twenty persons voted for you at said precinct on said day of election under twenty-one years of age, and twenty persons voted for you non-residents. I object to the votes of South Mills precinct aforesaid being counted. You are reputed to have a majority of over sixty votes at said precinct.

There is also a general specification at the end of the notice, as follows:

Specification 13.—That there were gross irregularities, frauds, and violence, and intimidation of voters at each and every precinct in each and every county in said district on the said day of election, whereby you received more votes than you were entitled to, to wit, one thousand, and I lost one thousand votes in said election.

So this contestant verily believes and avers that by reason of said irregularities, illegalities, frauds, violence, force, threats, and intimidations, and the improper counting and canvassing by the various judges of election and county canvassers in the various counties in said district, and the throwing out and not counting of votes given at said election for me, the election was changed; and if it were not for the irregularities, illegalities, frauds, violence, force, threats, and intimidations and improper counting by the various judges of election and county canvassers in the various counties in said district, and the throwing out and not counting said votes in said district given for me, that I would be elected to the Forty-sixth Congress of the United States for the first district of North Carolina.

We think it too plain for argument that neither of these specifications sets out particularly that the board of election officers at South Mills were not properly constituted and qualified to act. This ground of contest is not, therefore, open to the contestant, and must be rejected.

If, however, any members of the House are disposed to consider this claim on the evidence presented, we have to say that the registrar and two inspectors were the regularly appointed registrar and inspectors. These inspectors were sworn by the sheriff. No authority to the sheriff to administer oaths has been shown us. A third inspector was appointed by the registrar, who was probably not sworn by anybody, who acted for a short time, and whose place was taken by Mr. Sawyer, who acted as inspector without formal appointment, but, it is manifest we think, with the assent of the registrar. The remaining inspector was not appointed, so far as appears, because the registrar could not find any one who would serve. There is no evidence that any of these officers acted unfairly or improperly, except in the particulars hereinafter considered, of adjourning for dinner; of locking up the ballot-box while at dinner; and that Overton was under the influence of liquor. The officers acting must be taken to be *de facto* officers. The omission to take the oath will not vitiate the election. (Section 79, McCrary on Elections, and cases cited.) The principle is well established that the

acts of public officers being in by color of an election or appointment, are valid so far as the public is concerned.

By section 9, chapter 275, Acts of North Carolina, 1877, already quoted, the judges, with the registrar, "shall open the polls and superintend the same until the close of the election."

SEC. 20. When the election shall be finished, the registrars and judges of election, in presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, &c.

The registrar and judges of election constitute a board for the purposes of opening the polls, superintending the election until the close of it, and for counting the ballots. And on general principles a majority of this board could act upon the matters on which they are authorized to act together, and the registrar and two judges are a majority of this board. Besides, if the third inspector is held to have acted under the authority of the registrar, this, so far as the rights of these persons are concerned, should be taken as an appointment, and three judges are a majority of four, even if the four judges be taken to be a board separate from the registrar.

Chapter 108, Battle's Revised Laws of North Carolina, section 2, clause 2, is:

All words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

The returned vote at South Mills cannot, therefore, be rejected for the reasons that the election officers were not properly sworn, or because there were not four judges of election in attendance.

The next objection is that Overton, one of the judges, was drunk while in the performance of his duties. This is not an issue raised by the notice of contest, and must be rejected. The evidence of two witnesses is that Overton was under the influence of spirituous liquors during the day, and this is all. There is no evidence that he was unable to attend to his duties, or that he did not properly attend to them, or that he was drunk, except this, of Barrington, page 33:

Q. Was the receiver of the ballots so much under the influence of liquor that he was unable to attend to the discharge of his duties at the polls?—A. He staid at the polls, but I think he was too drunk to be fit for business that day.

Q. Do you know that he did not discharge the duties of his office that day?—A. I do not.

Q. Was he in the discharge of his proper duties at the times you were around the polls during the day?—A. He was.

The reputation of Barrington for veracity will be noticed hereafter.

This does not invalidate the election. (McCrary, Section 124.)

The next objection is that there was an adjournment for dinner of about an hour, at 12 o'clock. This is not an issue particularly specified in the notice, and must be rejected. The testimony is that sometimes the election officers adjourn for dinner and sometimes not, and at this election they did adjourn at about 12 o'clock for one hour. There was ample time for every one to vote. This does not vitiate the election. (Fry vs. Booth, 19 Ohio St. Reports, 25.)

When they adjourned for dinner, one of the inspectors took the ballot-box about seventy-five yards, to a room in the house of John E. Spence, the registrar, locked it in the room, and took the key, and at the end of the adjournment got the ballot-box and carried it to the place of voting. This is not an issue raised by the notice of contest, and must be rejected. The evidence on this point is as follows: John E. Spence, Democrat, registrar, pages 36, 37:

Q. What became of the box that contained the ballots during that time?—A. One of the inspectors who received the ballots, to wit, Evan Overton, took the box containing the ballots to a room about seventy-five yards distant from the polls, and locked it in and took possession of the key.

Owing to the late hour of the day, and by consent of attorneys for plaintiff and defendant, the taking of further testimony in this matter closed until 9 o'clock Friday, the 26th day of September, 1879.

Pursuant to adjournment, the commission reassembled this the 26th day of September, 1879, and the testimony of John E. Spence resumed.

Question. At what hour did the inspectors or judges again open the polls?—Answer. About 1 o'clock p. m.

Q. Who carried the box containing the ballots back to the place of voting?—A. Evan Overton, in company with myself and Kenneth R. Sawyer.

Q. Has it not always been customary here to adjourn the voting at noon for dinner? (Question objected to by contestant's counsel.)

A. Sometimes they adjourn for dinner and sometimes they do not.

Q. What was the room used for in which the ballot-box was deposited during the adjournment for dinner?—A. It was an unoccupied room in my residence.

Q. Do you believe that the ballot-box was safe from interference during the adjournment for dinner?—A. I do.

(The above question objected to by contestant's counsel.)

JOHN E. SPENCE.

There is no evidence or suggestion that the ballot-box was tampered with. This does not vitiate the election.

The next contention in argument is "that fraud, violence, intimidation, and bribery were resorted to by the partisan friends of the contestant to force a majority" for him. This is not properly specified in the notice and must be rejected. The evidence of this is very indefinite. No voter testifies that he was prevented from voting by fraud, violence, or intimidation. The two persons, and the only two persons named by Barrington as deterred from voting by violence or intimidation, or induced to vote by fraud or bribery, are James Miller and Edmund Sawyer; both contradict it (page 50). The testimony of Barrington is found on pages 31–33, 10–12; that of Abbott on pages 12, 13, 38, 39, 40. Barrington, when asked directly, "Was there any violence used to influence the election?" answered, "There was no physical violence." The testimony of John E. Spence, registrar, pages 45, 46; of William S. Jones, farmer, page 47; of Calvin Jones, farmer, pages 48, 49; A. P. Cherry, deputy collector of internal revenue, page 51, is all to the effect that there was no intimidation or violence. Cherry, page 52, Jones, page 48, testify that Barrington's reputation is bad. M. J. Overton, page 82; Whitehurst, page 86; B. J. Overton, page 86; Halstead, page 87; J. L. N. Sawyer, page 90, testify that Barrington's reputation is good—good so far as they know. Barrington was a mulatto, a school-teacher, a partisan of Respass. Barrington himself voted for Respass (page 48). No person is named of whom it is proved that he voted under the inducement of fear, fraud, or bribery, or was prevented from voting by reason of violence or intimidation. The contestant does not claim that any elector was prevented from voting for him by violence or intimidation, or was induced not to vote for him by fraud or violence. This contest is between the partisans of Martin and the partisans of Respass, who was called an Independent Republican candidate. We find the whole charge of fraud, intimidation, violence, and bribery unfounded in fact.

VANDEMERE PRECINCT.

The specification in the notice of contest is as follows:

Specification 11.—That at the precinct of Vandemere, in Pamlico County, the poll

were not opened until between the hours of 9 o'clock a. m. and 12 o'clock m. on said day of election, whereby many persons who desired to vote for me, to wit, sixty or more, were prevented from so doing. That at said precinct of Vandemere the persons who acted as judges of election and conducted said election were not lawfully appointed, but were mere usurpers. That no proper certificate of said election was returned to the county canvassing-board; and that twenty or more votes were counted and returned to the county canvassing-board than were voted, as shown by the poll and register list kept by the said judges of election. That at said precinct you are reputed to have received a majority of forty-one votes or more. I object to the votes given at Vandemere precinct, in Pamlico County, on said day of election being counted.

The returned vote at this precinct is, Yeates, 31; Martin 71; majority for Martin, 40 (page 2).

The testimony of H. C. Holton, the registrar, and a Democrat, is as follows:

Deposition of H. B. Holton.

H. C. HOLTON personally appeared before me, James H. Miller, clerk of the superior court of Pamlico County, State of North Carolina, commissioner to take depositions in the case of Jesse J. Yeates against Joseph J. Martin, and, after being duly sworn, deposeth and says:

That he lives at Vandemere; age, twenty-eight years. Vandemere is a voting place in Pamlico County. Was registrar at the election held at Vandemere in November, 1878; that the election was held for Congressman; don't remember the exact day of election, but it was in November, 1878.

Question. Do you know whether this election was held on the regular election day for Congressman in November, 1878?—Answer. It was the day—

(Question objected to by defendant's counsel; objection overruled.)

Q. Was this election day in accordance with the orders in your appointment from the board of county commissioners of Pamlico County as registrar?—A. It was.

Q. In what Congressional district is Vandemere precinct, and what were the names of the candidates voted for at this election?—A. I don't recollect the number of the Congressional district; the persons voted for were Jesse J. Yeates, Joseph J. Martin, and John B. Respass.

Q. At what time were the polls open at this election?—A. I do not know exactly, but about 11 o'clock a. m.

Q. What was the regular hour for opening the polls according to law?

(Question objected to; objection overruled.)

A. Seven o'clock a. m.

Q. What were the causes of the polls not being open at an earlier hour?—A. The judges appointed were not there.

Q. Do you know this of your own knowledge?—A. I know that they were not there.

Q. Did you endeavor to appoint inspectors according to the powers delegated to you as registrar?—A. I did.

Q. Did you succeed in getting men from both parties at an earlier hour than 11 o'clock to serve as inspectors?—A. I did not. I got enough men from both parties to serve as inspectors at or near 11 o'clock.

Q. Did the laws require that you should appoint two inspectors from each of the political parties?

(Question objected to; objection overruled.)

A. The law does so require.

Q. Did you appoint any of the inspectors from either party before the hour of 11; and, if so, from what party?—A. I did appoint two of the inspectors some time before 11 o'clock; don't remember the exact time; they were both from the Democratic party.

Q. Did you appoint any from the Republican party before this time; if so, did they refuse to serve?—A. I did appoint one; he refused to serve.

Q. Was not the polls prevented from being opened at an earlier hour on account of Republicans refusing to serve as inspectors?—A. That was the reason that the polls were not open sooner.

Q. Do you know whether any Democrats left the polls without voting before the polls were opened?—A. I do know that some Democrats left before the polls were opened without voting.

Q. Did any one object to your opening the polls at 11 o'clock on account of some Democrats having left without voting, and for reasons that a fair election could not be had?—A. There was such objection.

Q. Did any Democrats leave the precinct without voting and before you had appointed the Democratic inspectors?—A. The Democrats had not left.

Q. Did you know about the difference between the number of votes registered at that precinct and the number of votes cast at that election? If not the exact number, about what was the number that failed to vote?—A. About sixty.

Q. What do you mean by sixty?—A. I mean that sixty is the difference between the voters registered and the votes cast.

Q. Did the Republican party poll about its usual vote at that election at that precinct?—A. It did.

Q. Was almost the entire falling off of voting at this precinct on the part of the Democratic party?—A. It was.

Cross-examined by defendant:

Q. What hour did you go to the place where the polls were to be opened?—A. About 7 o'clock.

Q. Who did you find there?—A. I do not remember at present.

Q. How many persons were present?—A. Five or six.

Q. How long did you wait before you took steps to supply the place of the absent inspectors?—A. About one hour.

Q. How many Republicans did you apply to to act as inspector?—A. I only applied to one, that I remember.

Q. Did he refuse?—A. He did.

Q. Did he assign any reason for his refusal?—A. The only reason that he assigned was that he did not care about it, and thought that I could get somebody that would do better; he could not read and write.

Q. Was this person a white man or a colored man?—A. He was a colored man.

Q. Did the persons who left the precinct before the polls were opened know that steps were being taken to open the polls?—A. They did.

Q. How many came and left before the polls were opened?—A. I suppose about ten or fifteen.

Q. Were they all persons who voted the Democratic ticket?—A. I think they were.

Q. Did you then or previously hear any expression among the members of the Democratic party voting at that precinct of dissatisfaction with the nominee of that party after he was nominated?

(The plaintiff's counsel objects on the ground that witness cannot state general rumors, but can only state what voters at this precinct said on the day of the election to him, the witness. Objection overruled.)

A. I did not hear any objection then or at any other time.

Q. Who made objection to your opening the polls at 11 o'clock?—A. I do not remember at this time.

Q. How many so objected?—A. I think two or three.

Q. How many registered voters were there in Vandemere precinct at that election?—A. I do not remember, but about one hundred and sixty, I think.

Q. Was there a general turnout of the Democratic party at that election?—A. I don't think there was a general turnout.

Q. What kind of weather was there on that election day?—A. I think it was fair weather.

Q. What was the condition of the roads?—A. Pretty good.

Q. Did you, on discovering that parties intended leaving without voting, remonstrate with them?—A. I think I did.

Q. What did they reply?—A. I do not remember.

Q. Did any Republicans leave without voting?—A. I don't think they did.

Q. At what hour did the polls close that day?—A. The polls closed at sunset.

Q. Did every person at the polls have a fair and free opportunity of voting after the polls were opened?—A. They did.

Q. Was there any crowding, disturbing, or intimidation used to prevent vote from voting?—A. There was none.

Q. Did any persons apply after the polls were closed to be allowed to vote?—

Plaintiff's counsel:

held at that precinct?—A. I think that was the reason why there was not a general turnout of the Democratic party.

Q. If, before these Democrats left the polls, you had asked other Republicans to be inspectors besides this colored man, and if these did not refuse?—A. I do not remember.

Q. What ticket do you generally vote?—A. The Democratic.

Q. What political party do you generally vote with?—A. The Democratic.

H. C. HOLTON.

The deposition of F. P. Gatlin, clerk on the day of election, is as follows:

Deposition of F. P. Gatlin.

F. P. GATLIN personally appeared before me, J. H. Miller, clerk superior court of Pamlico County, North Carolina, and commissioner to take depositions in the case of Jesse J. Yeates against Joseph J. Martin, being duly sworn, deposeth and says:

I am a resident of Pamlico County, North Carolina; age, thirty-three years, and was clerking at Vandemere, N. C., the 5th day of November, 1878, at the store of John R. McCotter. I was clerk there on the day of election for Congressman, Jesse J. Yeates, Joseph J. Martin, and John B. Respass being candidates. The polls were held at John B. McCotter's store. The polls were opened on that day at 11½ a. m.; this I knew by looking at my watch. I wished to know.

(Motion here made by defendant's counsel that the witnesses for plaintiff, except the one on the stand, leave the room. Objected to by plaintiff's counsel. Motion overruled.)

Question. Why did you wish to know?—Answer. I wished to know because I thought it illegal.

Q. Do you know how many persons left the precinct before the election commenced?—A. About six, of my belief; and these were Democrats. Others might have left and I not have known it.

Q. Was this a full election?—A. It was not.

Q. Was the Republican vote full at that election?—A. I think it was.

Q. Was the Democratic vote at that election full?—A. It was not.

Q. Was there any general rumor why the voting was not full at this election? (Defendant's counsel objects; objection overruled.)

A. There was at this precinct. The reason was just this, that the voters, so many of them leaving before the polls being opened, that we, a few of us at Vandemere, thought that this was the reason that the Democrats did not turn out.

Q. Did you ever hear any voter of the Vandemere precinct state that the reason why he did not vote at this election was because the understanding in the country was that there was no election being held there on that day, and was this voter a Democrat?

(Defendant's counsel objects, unless the answer be confined to expressions before or on the day of election; objection overruled.)

A. I think I did hear one man say he should have come but he did not think there would be any election; and this man was a Democrat.

Q. Did you or do you know of any one trying to get Republicans to act as inspectors, that the polls might be opened at an earlier hour than they were; and, if so, do you know the reasons they gave for refusing to act?—A. I did not try, but Mr. Holton did. We wanted to know if any Republicans were there, and none would acknowledge that they were Republicans.

Q. Did any of those parties afterwards vote; and, if so, what ticket did they vote?—A. They did vote. I am not positive what ticket they voted, but they were Republicans.

Q. Did not Mr. Holton, the registrar, make a public proclamation or ask publicly, if there was any Republicans present, if they would not act as inspectors, before 11 o'clock a. m. and, if so, state if when the inquiry was made there was not Republicans present.—A. He did, but they would not acknowledge they were Republicans, but they were Republicans.

Q. How long have you been a resident of Vandemere precinct, and do you know how the precinct stood in regard to parties at this election; whether it was a Democrat or Republican precinct?—A. I have been there seven years; it has heretofore, up to the last election, gone Democratic.

Q. Are you generally acquainted with the politics of the voters of this precinct; and if so, what was its politics at the time of the election in November, 1878, according to your best knowledge and information?—A. I was, up to the election of 1878, acquainted with the politics of the precinct, and to the best of my knowledge it was Democratic. In 1878 I think it would be a close vote.

Q. If at and from the time of the nomination of Mr. Martin by the Republican party if there was not some dissatisfaction in the Republican party at that precinct against Mr. Martin?—A. I do not know.

Q. Was not John B. Respass a candidate for Congress at this election and an Independent Republican, and did he receive any votes at this precinct?—A. He, Respass, was an Independent Republican candidate. I think received a vote or votes.

Q. Was not the feeling of the Democratic party of that precinct strongly in favor of Mr. Yeates?—A. I think it was; I am a Democratic voter at that precinct.

FRANCIS P. GATLIN.

Holton's (the registrar) testimony is that he got enough men from both parties to serve as inspectors at or near 11 o'clock.

The polls were opened at 11½ o'clock (Gatlin).

The other depositions in this precinct are, Caldwell, page 19; McCotter, page 21; Riggs, pages 22, 23; Patrick, page 23; Muse, page 23; Riggs, page 24; Jones, page 24; John C. Muse, page 25; James Muse, page 25; Bland, page 25.

It is evident that the reason of the delay in opening the polls was the absence of some of the judges of election, and that the registrar endeavored to appoint judges, but did not succeed in making the appointments until about 11 o'clock; that the intention to have an election was never abandoned; that the persons who left the precinct before the polls were opened knew that steps were being taken to open the polls, and that the registrar thinks he remonstrated with the persons who intended to leave without voting, and says that every person at the polls had a fair and free opportunity of voting after the polls were opened, and that there was no crowding, disturbance, or intimidation, and no person offered to vote after the polls were closed.

Under the statutes of North Carolina, which provide for filling vacancies, as has been said, some delay is inevitable, and when the registrar is present and is endeavoring to fill the vacancies it is the duty of the voter to wait, and if he leaves before there is a formal announcement by the registrar that there will be no election held, or before the holding of an election has been manifestly abandoned, he leaves voluntarily, and his vote cannot be counted.

If it becomes important to determine how many persons left before the polls were opened, reference is made to the following testimony: Holton, the registrar, says: "I suppose above ten or fifteen;" and he thinks they were all persons who voted the Democratic ticket. Gatlin, the clerk, says, "About six, in my belief; and these were Democrats. Others might have left and I not have known it." McCotter says "five." The witnesses who swear that they left, or did not go to the polls, under a belief that no election would be held, and that they would have voted for Yeates, are Jesse Riggs, page 23; Patrick, page 23; John W. Muse, page 23; James Riggs, page 24; Joshua Jones, page 24; Seth Muse, page 25; John C. Muse, page 25; Joshua Bland, page 26—eight in all. In any view, this is all the injury that we find has been done to Mr. Yeates by the delay in the opening of the polls.

The charge of conspiracy and fraud on the part of the Republicans to prevent the opening of the polls is not sustained by the evidence. None of the regular inspectors were present at the opening of the polls, and only five or six persons. The registrar appointed two Democratic inspectors, who accepted, and one Republican, a colored man, who declined because he could not read or write, and this is the only person he applied to that he can remember until he made the Republican appointments. Gatlin, the Democratic clerk, says there were Republicans present, but they would not acknowledge they were Republicans; but Caldwell, a Democrat and poll-holder, says, pages 20, 21, that the registrar tried one

Republican, a colored man, who assigned as a reason for not acting that he thought the registrar could do better, as he could not read and write, and that at 10.30 o'clock there were perhaps fifteen persons assembled, none of them Republicans, so far as he knew. This was a small voting precinct; the voters assembled slowly, and the delay in opening the polls was, under the circumstances, natural enough.

HAMILTON PRECINCT.

At this precinct the votes returned are 161 for Yeates and 225 for Martin.

The contestant contends that the vote of Hamilton precinct should not be counted on account of the conduct of contestee "discharging the duties of registrar, checking off the names of persons who presented themselves to vote, and doing other and like duties of that office." The other objections found in this notice of contest in regard to Hamilton precinct were abandoned at the argument.

All the evidence on this subject is as follows :

Deposition of Everitt (page 42).

JUSTUS EVERITT, being duly sworn, says, in response to the following question in writing :

Question. State whether you were present at the election in Hamilton, in Martin County, North Carolina, on the 5th day of November, 1878, at which election Jesse J. Yeates and Joseph J. Martin were candidates for a seat in the present Congress of the United States, and what acts, if any, the said Martin did in reference to the conducting and managing said election. State fully his acts and conduct at said election.—

Answer. I was there a part of the time, and Mr. Martin was also present and had charge of the registration books, and had charge when I left, which was in a few minutes.

Cross-examined :

Q. What Mr. Martin did, was it done in the presence of the poll-holders?—A. It was.

Q. Did Mr. Martin act corruptly?—A. Not that I know of.

JUSTUS EVERITT.

Deposition of J. G. Carraway.

JONATHAN G. CARRAWAY, being duly sworn, says, in response to the following question in writing :

Question. State whether you were present at the election held in Hamilton, in Martin County, North Carolina, on the 5th of November, 1878, at which election Jesse J. Yeates and Joseph J. Martin were candidates for a seat in the present Congress of the United States, and what acts, if any, the said Martin did in reference to the conducting or managing said election. State fully his acts and conduct at said election.—

Answer. I was present on the day of election spoken of; Mr. Martin was present around the polls, and I saw him check off some of the registered names of voters as they voted; and my impression is that at one time he came around the counter where the judges of election were, and while on the side of the counter where the judges of election were I think he did not check off any names while there; and when he checked off names he was on the side of the counter where the people came up to vote. Further this deponent saith not.

Cross-examined :

Q. How many names did Mr. Martin check off the poll-book?—A. I can't say positively, but I think he checked off some forty or fifty.

Q. Was the checking off done in the presence of the poll-holders?—A. I think it was, or a majority of them.

Q. Did Mr. Martin act corruptly in checking off the names?—A. Not that I know of.

Q. Who received the votes?—A. W. K. Gladson.

Q. Was any man's name deposited in the box before his name was checked off of the poll-book?—A. None that I know of.

Q. Were you one of the judges at said election?—A. I was acting as registrar for Mr. Justus Everitt, who was the legally appointed registrar.

Q. Was the election conducted fairly?—A. So far as I know.

(The counsel for the contestant objects to the above upon the ground that it is going into new matter.)

Q. What party do you belong to?—A. To the National Democratic party.

Q. Who did you vote for?—A. I voted for Jesse J. Yeates.

(The counsel for the contestant objects to the two above questions upon the grounds of the first objection, as being immaterial or irrelevant.)

Q. How was the party divided of those votes that was checked off by Mr. Martin?—A. I don't know.

J. G. CARRAWAY.

The statute of North Carolina, section 5, chapter 275, Acts of 1877, is—

" . . . If any registrar shall refuse or neglect to perform his duties the justices of the peace for the township may remove him and appoint another in his place. And no person who is a candidate for any office shall be a registrar, or judge, or inspector of an election.

It is not contended that Mr. Martin was appointed either registrar, or judge, or inspector of elections. So far as appears, these offices were all filled by other persons, who were present and performing their duties. Mr. Martin acted in the presence of the poll-holders. Mr. Carraway was the acting registrar. Mr. Martin checked off some names on the registration book when on the side of the counter where the people came to vote, and at one time came around the counter where the judges of election were, but did not check off any names while there. Then it seems that he did not act corruptly, and that the election was fairly conducted, and that he took no part in receiving votes or keeping the poll-book, and there is no evidence that any person was permitted to vote who was not entitled to vote, or, being entitled, was prevented from voting, or that any votes were improperly received or counted, or that Mr. Martin's conduct had any effect whatever upon the election. This conduct of Mr. Martin may have been an act of indiscretion, but, in the absence of any evidence that it produced any effect upon the election, we do not think that any weight should be attached to it.

PROVIDENCE TOWNSHIP.

The returns from Providence Township were rejected by the county canvassing-board of Pasquotank County for the reason that the returns were delivered to the board by the registrar and not by one of the judges of election. The returns showed that Mr. Yeates had received thirty-nine (39) more votes in this precinct than Mr. Martin (page 14.) The contestant admits that this objection is not sufficient to justify the committee in rejecting this return, but insists that, if counted, the returns from Salem precinct should also be counted.

Section 21, chapter 275, Acts of North Carolina of 1877, is:

The judges of election in each township, ward, or precinct, shall appoint one of their number to attend the meeting of the board of county canvassers as a member thereof, and shall deliver to the member who shall have been so appointed the original returns, statement of the result of the election in such township, ward, or precinct; and it shall be the duty of the members of the several township, ward, or precinct boards of election to attend the meeting of the board of county canvassers for such election in the county in which they shall have been appointed as members thereof.

And by section 23 a majority of the members shall be sufficient to constitute such board. While for certain purposes the registrar and judges of election act together as a board of election, yet there are certain duties which by statute pertain to the registrar alone, and certain

others which alone can be performed by the judges of election. If the registrar refuses or neglects to perform his duties, the justices of the peace may remove him and appoint another in his place; but if the judges of election fail to attend, the registrar shall appoint some discreet person to act as such. We think, therefore, that section 21 requires the judges of election to appoint one of their own number to attend the said meeting of the board of county canvassers and deliver the returns; that the registrar is excluded, and that a registrar could not act as one of the board of county canvassers, and is not the person designated by law to deliver the original returns to such board.

But if the returns be delivered by any person, and it be shown to be the true return, we know no reason why it should not be counted, and it is not disputed that the returns from Providence Township truly showed that Mr. Yeates had 39 votes over Mr. Martin. We think these votes should be counted for Mr. Yeates.

This is the case made by the contestant.

The contestee in his counter allegations contends that votes in addition to those returned for him should be counted for him in Salem precinct, in Merry Hill precinct, and in Goose Nest precinct.

SALEM PRECINCT.

The votes cast at this precinct were: for Yeates, 29; for Martin, 164; for Respass, 7; Martin's plurality 135. The returns were rejected by the board of county canvassers, it is alleged, on the same ground as the returns from Providence was rejected, to wit, that the registrar, and not one of the judges of election, was appointed to deliver and did deliver the original returns to the board (page 56). The following is the testimony on this point:

Q. State whether you were a member of the county canvassing-board for the county of Pasquotank, who canvassed the returns from the several precincts in said county at said election.—A. I was registrar of the election at Salem precinct, and brought the returns of the election from that precinct to the county canvassing-board of said county at the request and by the direction of the poll inspectors who conducted the same, and claimed the right to act as a member of said returning-board, but by a majority vote of the board I was not allowed to do so.

Q. Were you present when said board considered said returns, and do you know what action they took in regard to them?—A. I was present; they proceeded to canvass the returns from Salem precinct, and refused to count them.

Q. State whether there is in your office, as register of deeds for said county, any record of the action of the canvassing-board for the county of Pasquotank in reference to the returns from said precinct at said election?—A. Yes; it appears from a book among the records of my office, styled "Election book," which book I now hold in my hand, that the following entry was made on page 47 of the same, headed "Record of an election held for Representative in Congress and senators and representatives in the general assembly, on Tuesday after the first Monday in November, 1878, in the county of Pasquotank, North Carolina," to wit:

"The votes as returned by the board of canvassers from the precincts of Salem and Providence were not received and counted by the board on account of informality, and therefore not counted in the above statement. Signed, R. F. Overman, clerk board county canvassers."

(Question and answer both objected to on account of incompetency by contestant's counsel.)

So far as this alleged reason is concerned, it is no ground whereby the committee can reject the return, as stated in the case of Providence Township. The contestant further objects to counting the votes at this precinct, because, as he says:

1st. The polls were not opened until 12 o'clock m.

2d. That before they were opened some twenty-five or thirty voters had left.

3d. That nearly one-half of the entire vote of the precinct was not polled.

4th. That no registrar was duly or legally appointed.

5th. That the other officers of election were not duly appointed or sworn.

The following is the whole testimony on these points:

Deposition of James S. Wilcox.

JAMES S. WILCOX, being duly sworn, deposes and says:

Examination by W. F. POOL, counsel for contestee:

Question. What is your name, age, residence, and occupation?—Answer. My name is James S. Wilcox; I am thirty-two years old; I reside in Salem Township, Pasquotank County, North Carolina; occupation, farming.

Q. Do you know anything of an election held at Salem precinct, Pasquotank County, North Carolina, on the first Tuesday in November, 1878, at which, among other officers, a member of Congress from the first Congressional district of North Carolina was voted for?—A. I do. I was present at the election.

Q. What candidates were voted for at that election for Congress from the first district of North Carolina?—A. Jesse J. Yeates, Joseph J. Martin, and John B. Respass.

Q. How many votes did each of these candidates receive at Salem precinct at said election?—A. Jesse J. Yeates received twenty-nine (29), J. J. Martin received one hundred and sixty-four (164), and John B. Respass received seven (7) votes.

Q. State whether you were a member of the county canvassing-board for the county of Pasquotank who canvassed the returns from the several precincts in said county at said election.—A. I was registrar of the election at Salem precinct, and brought the returns of the election from that precinct to the county canvassing-board of said county at the request and by the direction of the poll inspectors who conducted the same, and claimed the right to act as a member of said returning-board, but by a majority vote of the board I was not allowed to do so.

Q. Were you present when said board considered said returns, and do you know what action they took in regard to them?—A. I was present; they proceeded to canvass the returns from Salem precinct, and refused to count them.

Q. State whether the election at Salem precinct, at the period aforesaid, was fairly conducted.

(The contestant's counsel objects to this question for the reason that it is not a matter of opinion with the witness as to whether the election was fairly conducted at said precinct, but how it was conducted.)

A. It was, so far as I know.

Q. Was any legally qualified voter who offered to vote at said election denied the right to do so?

(The contestant's counsel objects to this question on the ground that it is a matter of opinion with the witness.)

A. Not that I know of, after the polls were opened [and none could have been refused before the polls were opened].

(Contestant's counsel objects to the latter part of the answer, inclosed in brackets, for the reason that it is a matter of opinion with the witness.)

Q. State whether there was any intimidation practiced upon any voter at said precinct at said election.—A. None that I know of.

Cross-examination by contestant's counsel:

Q. Who was the regularly appointed registrar for Salem precinct for said election? (Contestee's counsel objects to the question on the ground that the appointment of a regular registrar is a matter of record, and parol evidence is incompetent to prove the same.)

A. I was told that J. S. Lister was.

(Contestee's counsel objects to this answer on the ground it is hearsay.)

Q. Did you see notices posted in Salem Township, signed by Joshua S. Lister as registrar for Salem precinct, for said election?

(Contestee's counsel objects to this question on the ground that no answer the witness could make thereto would be competent.)

A. I did.

Q. Do you know that said Joshua S. Lister registered voters in said precinct for said election?

(Contestee's counsel objects to this question for irrelevancy.)

A. I do not.

Q. Who appointed you registrar for Salem precinct for said election?

(Question objected to by contestee's counsel on the ground of incompetency.)

A. F. M. Godfrey.

Q. When was your appointment as registrar for Salem precinct for said election made by F. M. Godfrey?

(Question objected to for incompetency.)

A. On the first Tuesday in November—the day of election.

Q. At what time on said day of election were the polls opened at Salem precinct?
(Contestee's counsel objects to this question on the ground that the witness, having already stated that said election was fairly conducted, that no intimidation was practiced, and that no legally qualified voter was denied the right to vote, that the time when the polls were opened is immaterial.)

A. I think it was all of 12 o'clock.

Q. State whether or not persons, on the day of said election, did not go to Salem precinct to vote before said polls were opened and after sunrise on said day, who left without voting, and did not return to vote; and, if so, in your opinion, how many?—

A. As many as twenty-five or thirty.

Q. Were you sworn in as registrar for Salem precinct for said election?

(Question objected to by contestee's counsel on the ground of immateriality.)

A. I was not.

Q. Were the judges or inspectors of the election at Salem precinct for said election sworn on said day of election; and, if so, by whom?

(Contestee's counsel objects to this question on the ground of immateriality.)

A. They were by me.

Q. Were you a magistrate on said day of election, when you administered the oath to the judges or inspectors of election at Salem precinct on said day of election?—A. I was not.

Q. Did you hold any office at that time which authorized you to administer oaths?

(Question objected to by contestee's counsel on the ground that, witness having already stated that he was registrar at said election, the question propounded is a question of law and not a question of fact.)

A. None, unless the appointment of Mr. Godfrey gave me the authority.

Redirect examination:

Q. Did you hear the persons, of whom you testified in your cross-examination as leaving Salem precinct on said day of election and not returning there to vote, express themselves as to which candidate they desired to vote for?—A. I heard a great many, but cannot say I heard them all. A majority of those whom I did hear express themselves on the subject said that they desired to vote for J. J. Martin. I only heard one of the class named say that he desired to vote for J. J. Yeates, the contestant. I heard six of them say that they desired to vote for J. J. Martin.

Q. From what you saw and heard at said election, which candidate lost the larger number of votes on the account of the late hour when the polls were opened?—A. In my opinion, J. J. Martin.

Q. Was F. M. Godfrey, who you say appointed you registrar at said election, a justice of the peace in Salem Township? and if there were other justices of the peace in said township, state how many and their names.—A. F. M. Godfrey signed the appointment of myself as registrar of election as justice of the peace in and for Salem Township, and was so recognized. There was two others at that time so recognized—J. S. Lister and W. L. Davis.

Q. You stated in your cross-examination that you were appointed as registrar on the day of election. Please state the circumstances under which you were appointed.—A. About half-past 10 or 11 o'clock the registration book of Salem precinct was sent to the precinct with a message from J. S. Lister, stating that he was sick and that it was impossible for him to attend on that day. I took my horse and went to F. M. Godfrey's, the nearest magistrate, with Mr. Lister's statement, and thereupon said Godfrey appointed me registrar for said election; and as soon as Mr. Godfrey made the appointment I immediately returned and opened the polls.

(Question and answer objected to by contestant's counsel on the ground of incompetency and irrelevancy.)

Recross-examination

Q. State what is the respective Democratic and Republican vote usually cast at Salem precinct.

(Question objected to by counsel for contestee on the ground of irrelevancy.)

A. I don't think that I can answer correctly the question.

Q. Is not the usual Democratic vote at Salem precinct one hundred or more?

(Question objected to by contestee's counsel on the ground of irrelevancy.)

A. I think it averaged from eighty to one hundred up to the August election of 1878.

Q. Was not your appointment as registrar for Salem precinct by F. M. Godfrey made at your request?—A. It was not.

Q. Have you not held office in Pasquotank County; if so, what office, and by what political party were you elected?

(Question objected to by contestee's counsel on the ground of irrelevancy, and on the further ground that it is not in rebuttal of anything called out in the redirect examination.)

A. I was mayor of Elizabeth City for the year 1876; was nominated by the Republican party and elected by the votes of both parties. I was county commissioner for two years, from about 1872 to 1874. I was nominated by the Republican party and was elected by the votes of both parties. I was a justice of the peace from about 1872 to 1874, or about that time, by appointment of clerk of the superior court to fill a vacancy. I was elected a justice of the peace by both parties soon after reconstruction. In 1875 I was appointed by the county commissioners sheriff of the county to fill the vacancy of John T. Price, sheriff, and 1876 I was nominated by the Republican party for sheriff of the county and was elected.

Q. For whom did you vote for Congress at the November election, 1878?—A. I voted for Joseph J. Martin.

Direct examination resumed:

Q. What is the usual majority of the Republicans at Salem precinct?—A. From one hundred to one hundred and fifty.

The witness, James S. Wilcox, desires to make the following corrections:

Upon reflection and examination of the records of the court, there were but two magistrates in Salem Township on the day of said election, instead of three, as stated. And one of the six men, as stated, going away without voting, he believes, afterwards returned and voted.

JAMES S. WILCOX.

Sworn and subscribed to before me, having first been read over to the witness, this the 8th day of November, A. D. 1879.

MILES COMMANDER,
Clerk Superior Court Pasquotank County
and ex officio Notary Public.

Deposition of J. S. Lister.

J. S. LISTER, being duly sworn, deposes and says, in answer to interrogatories, as follows:

By counsel for contestee:

Question. State your name, age, residence, and occupation.—Answer. My name is Joshua S. Lister; my age is forty-two years; residence, Salem Township, Pasquotank County, North Carolina; occupation, merchant and farmer.

Q. State what connection, if any, you had with the election held at Salem precinct, Pasquotank County, on the first Tuesday in November, 1878, and state such facts as are within your knowledge in regard to the same.—A. I was appointed registrar for that precinct. I registered the voters within the time prescribed by law. I was sick on the morning of the election and unable to attend to any official business, and I sent the registration book by the first trustworthy party that I saw to the Salem polling place at about half an hour or an hour after sunrise. I sent the book by John Swain, sr., and knowing that his team was slow, directed him if he saw any one going faster than he could to place it in their hands to be delivered to Mr. Godfrey. I lived six miles from the polling place.

(Question and answer objected to by contestant's counsel on the ground of irrelevancy.)

Q. Do you know who was appointed as registrar in your place, if any one was so appointed?—A. I think J. S. Wilcox was.

(Question and answer objected to by contestant's counsel on the ground of irrelevancy.)

Q. Was the appointment of James S. Wilcox as registrar satisfactory to you, and did it meet with your approval?—A. I would have acquiesced in any appointment Mr. Godfrey made; this appointment was satisfactory to me.

(Question and answer objected to by contestant's counsel on the ground of incompetency and irrelevancy.)

Q. Do you know the number of justices of the peace in Salem Township at the time of said election? If so, please give the number and names.—A. There were two, F. M. Godfrey and myself.

Cross-examination :

Q. Did you direct Mr. Godfrey to appoint J. S. Wilcox registrar for Salem precinct for said election, or did you take any part in his appointment?—A. No.

(Question and answer objected to by contestee's counsel on the ground of immateriality.)

Q. What is the usual Democratic vote of Salem precinct?

(Question objected to by contestee's counsel on the grounds of incompetency, irrelevancy, and that it is not in rebuttal of anything brought out on the direct examination.)

A. I do not know.

Q. What is the usual Republican majority at Salem precinct in said county?—A. I don't remember.

Q. Do you remember whether the Republican majority ever run up to one hundred?—A. I do not.

Q. What was the vote for Congress in 1876 at Salem precinct for J. J. Yeates, Democrat, and McD. Lindsey, Republican?

(Question objected to by contestee's counsel on the ground of irrelevancy.)

A. It appears from the paper which I hold in my hand, purporting to be the returns from Salem Township, that Jesse J. Yeates received 133 votes and D. McD. Lindsey received 201.

Q. From the same paper which you hold in your hand, from which the vote of Yeates and Lindsey is taken, what is the vote of the Republican and Democratic Presidential electors, respectively, at Salem precinct?

(Question objected to by contestee's counsel on the ground of irrelevancy and incompetency.)

A. The Republican electors received 217 and the Democratic electors 137 votes.

Q. Have you any doubt from the signatures to the paper which you hold in your hand, that it is the genuine returns from Salem precinct for 1876?

(Question objected to by contestee's counsel on the ground of incompetency.)

A. I have no doubt that this is the correct return.

J. S. LISTER.

This testimony shows that the polls were not opened until 12 o'clock m.; that J. S. Lister was the regularly appointed registrar; that he was sick on the morning of election, and that he sent the registration books by the first trustworthy person he saw about half an hour or an hour after sunrise to the Salem polling place, with directions that they be delivered to Mr. Godfrey; that about half-past 10 or 11 o'clock the registration books were received, with the message that Lister was sick and unable to attend, whereupon Mr. Wilcox, who appears to have been elected sheriff in 1876, took his horse and went to Mr. Godfrey's, the nearest magistrate, with Mr. Lister's statement, and thereupon Godfrey appointed Wilcox registrar for said election, and Wilcox returned immediately and opened the polls; that he was not sworn as registrar; that the judges and inspectors were sworn by him, but that he had no authority to administer an oath, unless this appointment as registrar gave him such authority; that the number of magistrates in Salem Township on the day of election was two, Mr. Godfrey and Mr. Lister; that Mr. Lister did not direct Godfrey to appoint Wilcox registrar, but that he would have acquiesced in any appointment Mr. Godfrey made, and that the appointment of Wilcox was satisfactory to him; that as many as twenty-five or thirty persons left the precinct before the polls were opened, and did not vote; and that, in the opinion of the witness, more of these would have voted for Martin than for Yeates; and that otherwise the election was fairly conducted; and that no legally qualified voter who offered to vote was denied the right to do so; and that the result of the August elections for solicitor is, Democratic vote, 30; Republican vote, 261; for two State senators, Democratic, 56 and 58, respectively; Republican, 261 and 261, respectively (page 92). In the election in November, Yeates received 29; Martin, 164; Respass, 7 votes.

For reasons hereinbefore stated, the fact that the polls were not

opened until 12 o'clock does not invalidate the election; and that as it was the duty of the voters to remain until the board of election officers was filled, in the absence of any evidence that the attempt to hold the election was abandoned, no credit can be given to either candidate for those voters who left and did not vote. Indeed, it is impossible to determine for whom they would have voted, but one witness thinks that a majority were for Martin. A comparison of the votes cast at this election, at which the only officer voted for was a Representative in Congress, with the August election, when the State officers were voted for, cannot properly be considered for the purpose of correcting its poll. The registrar was appointed by one justice of the peace, and not by two, and acted under this appointment, and must be taken to be a *de facto* officer. The inference is that the judges were the regularly appointed judges, and were sworn by the registrar, who, so far as appears, was not authorized to administer an oath. The fact that they were not sworn does not invalidate the election. No doubt is suggested that the votes were actually cast as returned. We think that the votes cast at this election should be counted for the candidates for whom they were cast.

MERRY MILL PRECINCT.

One hundred and eight votes for Mr. Martin were thrown out and not counted, because they had on them the words "Republican ticket" at or near the head of the ticket, on the same side as the name of the candidate and office. They were thrown out on the ground that the words "Republican ticket" were a device within the meaning of the laws of North Carolina. Mr. Martin contends that these ballots should be counted for him. The ballots were procured to be printed in this form by a Mr. James B. Martin, "an active Democratic politician," and an active supporter of Mr. Yeates (Record, page 79), although Mr. Yeates had nothing to do with it.

Section 18, chapter 275, of the Laws of North Carolina, 1877, provides—

* * * The ballots shall be on white paper and may be printed or written, or partly written and partly printed, and shall be *without device*.

SEC. 20. When the election shall be finished the registrars and judges of election, in presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, reading aloud the names of the persons who shall appear on each ticket; and if there shall be two or more tickets rolled up together, or any ticket shall contain the names of more persons than such elector has a right to vote for, or *shall have a device upon it*, in either of these cases such tickets shall not be numbered in taking the ballots, but shall be void, and the said counting of votes shall be continued without adjournment until completed and the result thereof declared.

These votes were rejected by the State authorities and are not included in Mr. Martin's returned plurality. We leave to the consideration of the House whether these votes should now be counted for Mr. Martin or not.

GOOSE NEST PRECINCT.

The contestee claims that one hundred and thirty-nine votes should be counted for him that were not received at this precinct. The vote as received and counted at this precinct was, for Yeates, 184; for Martin, 52 (page 77, Record). Prior to September, 1876, Goose Nest precinct and Hamilton precinct were separate precincts in the same township. September 4, 1876, Goose Nest precinct was abolished and the names of its

registered electors transferred to the registration books of Hamilton precinct. From that time up to August 5, 1878, all the electors of Hamilton township were required to be registered and to vote at Hamilton precinct. On the 5th day of August, 1878, the precinct of Goose Nest was re-established and a registrar for Goose Nest appointed, who was required to transfer from the registration books of Hamilton precinct the names of such registered electors as were then resident in Goose Nest precinct, which he did. (See Record, page 69.)

This was done under the sixth and seventh sections of the election laws of North Carolina, approved March 12, 1877, which are in these words, to wit:

SEC. 6. Registrars shall be furnished with a registration book, and it shall be their duty to revise the existing registration books of their precinct or township in such a manner that said books shall show an accurate list of electors previously registered in such precinct or township, and still residing therein, without requiring such electors to be registered anew, &c., &c.

SEC. 7. No elector shall be entitled to register or vote in any other precinct or township than the one in which he is an actual and *bona fide* resident on the day of election, and no certificate of registration shall be given.

The registration book for Goose Nest precinct having been prepared in this way, the judges of election met on the afternoon of the day preceding the election for members of Congress, when their attention was called to the twelfth section of the North Carolina election laws, which is in these words, to wit:

SEC. 12. Every person who shall present himself for registration shall state, under oath, how long he has continuously resided in this State, and in the county in which he offers to vote, whether he is an alien or native-born, when he became twenty-one years of age, whether married or single, and where and with whom he resides. Upon the request of an elector the registrar shall require the applicant to prove his identity, or age, and residence, by the testimony of at least one elector, under oath. And if an elector has previously been admitted to registration in any ward, township, or precinct in the county in which he resides, he shall not be allowed to register again in another ward, precinct, or township in the same county until he produces a certificate of the registrar of the former township, ward, or precinct, that said elector has removed from said township, ward, or precinct, and that his name has been erased from the registration books of the ward, township, or precinct from which he has removed; and the identity of any person claiming the right to be registered in any precinct of the same county, by virtue of such certificate, with the person named therein, shall be proved by the oath of the claimant, and, when required by the registrar, by the oath of at least one other elector. Every person found qualified shall take the following oath: "I, ———, do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of the State of North Carolina; that I have been a resident of the State of North Carolina for twelve months, and of the county of ——— for ninety days; that I am a duly qualified elector, and that I have not registered for this election in any other precinct, and that I am an actual and *bona fide* resident of ——— township (or precinct); so help me God." And, thereupon, said person shall be permitted to register, and the date of his registration shall be noted opposite his name in the registration book.

The judges of election thereupon decided that, under section 12, no elector whose name had been transferred to the Goose Nest registration book should be allowed to vote on the next day, unless he should produce a certificate that his name had been erased from the Hamilton book.

And on the next day they refused the votes on this ground of a certain number of persons; Johnson says of 154, and he gave a list of 160 names, six of whom he says were allowed to vote (page 75, Record); Lamb, page 78, testifies that he finds all the names on the list on the registration books of Goose Nest precinct marked challenged and rejected except thirteen, one of whom voted, and that he finds all these names on the registration book of Hamilton precinct except 21. As these 21 may not include the 13 names of the list on the Goose Nest books, it is

necessary to deduct the sum of 21 and 13, to wit, 34 from 154, leaving 120 names, which must have been on the registration books of both Goose Nest and Hamilton precincts, and which were marked challenged and rejected on the registration book of Goose Nest precinct. Johnson swears that these all tendered votes for Martin as Representative, and were rejected on the ground that they did not produce a certificate that their names had been erased from the registration books of Hamilton precinct, and this is confirmed by other witnesses.

On the night preceding the election, and after the judges at Goose Nest had rendered their above decision, J. T. Hyman, a Democrat, the registrar at Goose Nest, in company with one J. T. Weldo, the person who had called the attention of the judges to the said twelfth section, and one Boyle, went to Hamilton precinct and asked the Hamilton registrar to issue the required certificates of erasure to a number of electors, most of whose names were upon a list presented by them, comprising between one and two hundred names, for which electors the required certificates were issued by the Hamilton registrar, taking until about 10 o'clock that night to get through the list. Besides these, about a dozen electors applied in person for such certificates and obtained them. Hyman, the registrar at Goose Nest, before 12 o'clock that night, marked the word "certificate" opposite the names of the above-named electors in his registration book, and opposite the names of the other electors, whose names had been transferred to his book from the Hamilton book, he placed a cross mark. Those whose names were marked opposite with the word "certificate" were allowed to vote next day, and those marked with a cross were refused, singly, as each presented his ballot.

The electors so refused their votes then applied on election day, through one W. A. Johnson, an elector, to the registrar of Hamilton precinct for the certificates required, and the said registrar refused to give them the certificates (page 75).

These electors were the same persons who had tendered their votes for Martin as Representative in Congress.

Upon this state of facts the contestee contends that he is entitled to have counted for him the votes thus offered and illegally refused; or, to have rejected the 132 majority already counted for the contestant at this precinct on these grounds:

I. Unless the transfer of the names of electors at this precinct from the registration book of Hamilton to the registration book of Goose Nest was valid as a registration without any *personal* act on the part of electors, no one of these electors was legally registered at the precinct; for it is not in evidence that any one applied in person to be registered and *took the required oath*. The fact that an oath is required as a prerequisite to registration *makes registration a personal act*, which cannot be performed by proxy. If, as contended by contestant, a certificate of removal of residence from Hamilton precinct and erasure from the registration book of that precinct was a prerequisite to registration in Goose Nest precinct, then, under section 12 of the North Carolina election law, such certificate was required to be presented in person previous to registration anew at Goose Nest; and the law expressly requires that such presentation shall be accompanied with the oath of the elector that he is the identical person named in the certificate, and also by the general oath set forth in section 12. It is not pretended that any of the electors for whom such certificates were taken out presented them in person or took the required oaths. Indeed, the contrary appears. (See Record, page 71.) And it does not appear that those for whom certificates were taken out by proxy either authorized the application for them or even knew that the certificates had been applied for or taken out for them until informed of the fact at the polls.

II. If such certificates were a prerequisite to registration, then the granting of them on the day of election would have entitled the holders to register on that day, because they would in that case "become on that day entitled to register," as required in the thirteenth section of the election laws of North Carolina.

III. The application for these certificates, made for these electors on the day of election, and refused, was a complete compliance, on their part, with the requirements of the law as interpreted by the judges of election, and entitled them to vote as fully as if the certificates had been granted and they duly registered. See act of May 31, 1870, sec. 3 (U. S. Statutes at Large, vol. 17, p. 140).

IV. But really these certificates were not necessary at all, and they were not even authorized to be issued under the twelfth section of the North Carolina election law. It is evident that the twelfth section was meant only for such electors as should *change their residence* from one township or precinct to another; and therefore has no reference to the case in hand, where *none* of the electors in question had changed their residence. This is plain from the fact that each certificate is required to state that "the elector has removed from the said township or precinct." It is still plainer from the fact that such certificates were only for the purpose of enabling registered voters who had removed *to* register *again* in another ward, precinct, or township." But their registration at Goose Nest had already been completed under sec. 6 of the North Carolina law, the proceeding under which section is declared to be for the express purpose of not "requiring such electors to be registered anew."

We think the last ground at least is well taken, and that the statute so far as a certificate is concerned has no application to such a case as this is. The certificate required is "a certificate of the registrar of the former township, ward, or precinct that said elector has *removed* from said township, ward, or precinct, and that his name has been erased from the registration books of the ward, township, or precinct from which he has *removed*." None of these electors whose votes were refused had removed from any precinct, but by the re-establishment of Goose Nest precinct, without any removal on their part, they became resident in that precinct, and as the registrar had properly put their names on the registration books of Goose Nest pursuant to section 6 of the act of March 12, 1877, we think their votes should have been received, and having been illegally rejected should now be counted, and we find the number to have been at least 120, which should be added to Mr. Martin's vote.

RESULT.

Martin's returned plurality	51
Add plurality for Martin in Salem precinct, not counted	135
Add votes rejected in Goose Nest precinct, at least	120
	306
Subtract Yeates's plurality in Providence Township, not counted	39
Martin's plurality	267

If to this is added the votes cast for Mr. Martin in Merry Hill precinct, and rejected, to wit, 108, the plurality of Mr. Martin is 375.

We recommend the passage of the following resolutions:

Resolved, That Joseph J. Martin, the sitting member, is entitled to his seat in this House as a Representative in the Forty-sixth Congress from the first Congressional district of North Carolina.

Resolved, That Jesse J. Yeates is not entitled to a seat in this House as a Representative in the Forty-sixth Congress from the first Congressional district of North Carolina.

W. A. FIELD.
J. WARREN KEIFER.
J. H. CAMP.
E. OVERTON, JR.
W. H. CALKINS.

ANDREW G. CURTIN vs. SETH H. YOCUM.

TWENTIETH CONGRESSIONAL DISTRICT OF PENNSYLVANIA.

The principal question in this case is whether all the clauses in the new constitution and laws of Pennsylvania relating to "suffrage and elections," and especially those prescribing the qualifications of electors, are mandatory, and therefore not to be deviated from in any particular, or whether some of them are mandatory and others directory merely.

Held, That the provisions of the constitution (Pennsylvania) relating to the registry of voters is not mandatory in so far as it affects the right of a non-registered voter to vote, if he is otherwise qualified, the constitution providing: "But no elector shall be deprived of the privilege of voting by reason of his name not being registered."

Held, That the election law requiring a qualified elector to produce his own affidavit and that of a voter of his election district to his qualifications is directory merely. If the elector refuses to comply on being requested, the vote should be refused, because he refuses to obey a reasonable regulation, and he hurts no one but himself. But if he is allowed to vote without being required to file the affidavit, and is otherwise qualified, his vote is not an illegal one.

Held, That where the law requires several acts to be done by the officers of election, as (1) to ascertain whether a party offering to vote was registered; if he was not, (2) to require an affidavit of himself and a registered voter; (3) to see that it was subscribed and sworn; and (4) to keep it till the election was over, and then return it to the prothonotary's office with certain other papers, and the last act was not performed, does not show that the rest were left undone, nor must they be presumed not to have required the affidavits at all.

The House adopted the minority report May 11, 1880.

Mr. CALKINS submitted the following as the

VIEWS OF THE MINORITY:

It was admitted in argument in this case that one of the controlling questions is whether all the clauses in the new constitution and laws of Pennsylvania relating to "suffrage and elections," and especially those prescribing the qualifications of electors, are mandatory, and therefore not to be deviated from in any particular, or whether some of them are mandatory and others directory merely.

The qualifications under the constitution are—

ARTICLE VIII.

SECTION 1. Every male citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections.

First. He shall have been a citizen of the United States at least one month.

Second. He shall have resided in the State one year (or if, having previously been a qualified elector or native-born citizen of the State, he shall have removed therefrom and returned, then six months) immediately preceding the election.

Third. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

Fourth. If twenty-two years of age or upwards, he shall have paid within two years

a State and county tax, which shall have been assessed at least two months and paid at least one month before the election.

These are the qualifications of voters as determined and fixed in the organic law of Pennsylvania, and are not in conflict with section 2, article 1, of the Constitution of the United States, which provides that—

“The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature.

It will be seen that these qualifications are five in number, and all pertain to the person of the voter.

They are personal qualifications, namely: First, age; second, United States citizenship; third, State residence; fourth, election district or precinct residence; fifth, payment of taxes.

We are free to admit that no person is a qualified voter who does not combine in himself all these prerequisites; that the provisions of the constitution in relation thereto are imperative, and are not to be departed from. As no question which can affect the result in this case arises under any of these clauses, we pass to another question, which is more difficult to solve, and one not free from conflict and doubt. It is this: Are the constitution and laws of Pennsylvania on the subject of registration imperative and mandatory? The constitutional provision is as follows:

ARTICLE VIII.

SEC. 4. All elections by the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters, opposite the name of the elector who presents the ballot. Any elector may write his name upon his ticket, or cause the same to be written thereon, and attested by a citizen of the district. The election officers shall be sworn or affirmed not to disclose how any elector shall have voted, unless required to do so as a witness in a judicial proceeding.

SEC. 1. All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State; but no elector shall be deprived of the privilege of voting by reason of his name not being registered.

The foregoing two sections of the constitution comprise all that is necessary to quote in this connection. The law passed to carry out the above provisions, so far as is necessary to notice, will appear as we progress in this investigation.

The first section of the law relates to the duties of the assessors in making registry lists and returning them to the county commissioners, setting aside a time for revision before them. It also provides the machinery for carrying on the election. This is true also of the next preceding sections down to and including section 9.

Section 10 of the registry law under consideration refers to non-registered voters. We deem it proper to set it out in full.

On the day of election any person whose name shall not appear on the registry of voters, and who claims the right to vote at said election, shall produce at least one qualified voter of the district in which he claims to be a voter for the period of at least two months immediately preceding said election, which witness shall be sworn or affirmed, and subscribe a written or partly written and partly printed affidavit to the facts stated by him, which affidavit shall define clearly where the residence is of the person so claiming to be a voter; and the person so claiming the right to vote shall also take and subscribe a written or partly written and partly printed affidavit, stating to the best of his knowledge and belief when and where he was born; that he has been a citizen of the United States for one month, and of the Commonwealth of Pennsylvania; that he has resided in the Commonwealth one year, or if formerly a qualified elector, or a native-born citizen thereof, and has removed therefrom and

returned, that he has resided therein six months next preceding said election; that he has resided in the district in which he claims to be a voter for the period of at least two months immediately preceding said election; that he has not moved into the district for the purpose of voting therein; that he has, if twenty-two years of age, or upwards, paid a State or county tax within two years, which was assessed at least two months and paid at least one month before the election.

The said affidavit shall also state when and where the tax claimed to be paid by the affidavit was assessed, and when and where and to whom paid; and the tax receipt therefor shall be produced for examination, unless the affiant shall state in his affidavit that it has been lost or destroyed, or that he never received any; and, if a naturalized citizen, shall also state, when, where, and by what court he was naturalized, and shall also produce his certificate of naturalization for examination. But if the person so claiming the right to vote shall take and subscribe an affidavit that he is a native-born citizen of the United States, or if born elsewhere shall state the fact in his affidavit, and shall produce evidence that he has been naturalized or that he is entitled to citizenship by reason of his father's naturalization; and shall further state in his affidavit that he is, at the time of making the affidavit, of the age of twenty-one and under twenty-two years; that he has been a citizen of the United States one month and has resided in the State one year; or if a native-born citizen of the State and removed therefrom and returned, that he has resided therein six months next preceding said election, and in the election district two months immediately preceding said election, he shall be entitled to vote although he shall not have paid taxes.

The said affidavits of all persons making such claims, and the affidavits of the witnesses to their residence, shall be preserved by the election board, and at the close of the election they shall be inclosed with the list of voters, tally-list, and other papers required by law to be filed by the return judge with the prothonotary, and shall remain on file therewith in the prothonotary's office, subject to examination as other election papers are. If the election officers shall find that the applicant possesses all the legal qualifications of a voter he shall be permitted to vote, and his name shall be added to the list of taxables by the election officers, the word "tax" being added when the claimant claims to vote on tax, and the word "age" when he claims to vote on age; the same words being added by the clerks in each case respectively on the lists of persons voting at such elections.

Sections 11 and 12 of the act provide penalties for the failure of any of the election officers to perform their duties.

The remaining sections of the law provide for the counting of the vote, the return, and the manner of preserving the papers, ballots, &c.; in short, provides the machinery for carrying out the will of the people as expressed through the ballot-box. Other provisions of the law will be adverted to as they arise.

Having brought to the notice of the House the constitutional provisions, and the law passed by the general assembly of the State of Pennsylvania to carry it into effect, it is proper to call attention to the construction thereof as contended for by the parties to the contest, so far as they affect the present question.

It is assumed by contestant, and we believe, found to be true by the majority of the committee that it is proven that 1,000 and upwards of non-registered electors, voted at the election at which contestant and contestee were opposing candidates. We cannot acquiesce in this finding, as we believe the evidence does not support this view, and we will discuss this branch of the case at the proper time. But assuming the facts to be as stated, we must dissent from the conclusion of law arrived at by our associates. We do not believe that the provisions of the constitution relating to the registry of voters is mandatory in so far as it affects the right of a non-registered voter to vote if he is otherwise qualified. The clause of the constitution in terms excludes any such conclusion. The words "but no elector shall be deprived of the privilege of voting by reason of his name not being registered," found in section 1, article 8, to my mind settles the question. They are plain, and admit of but one interpretation, and applying the acknowledged rule to them that the ordinary import of words shall be taken to be *their meaning*, leaves no room for doubt.

But the law passed to carry out the section seems to be imperative, and it is a matter of some difficulty to decide whether it is repugnant to that clause which would seem to limit the power of the legislature to disfranchise an elector for non-registration who is otherwise qualified. Now, we admit that registry laws are salutary, and ought to be maintained in all proper cases and by all proper methods. But to maintain them constitutional restrictions must not be disregarded.

The foregoing clause of the constitution is, in our judgment, a limitation on the power of the legislature of the State, and it cannot pass a registry law whereby a voter shall be deprived of suffrage, if otherwise qualified, by reason of non-registration. This, it seems to us, was the very purpose of the clause. If left out the section would be perfect. It was to prevent the legislature from disfranchising qualified voters that it was inserted.

The new constitution of Pennsylvania was made whilst all the adjudicated cases respecting the old constitution, and the laws passed thereunder, were in full force, and well known to the members composing the constitutional convention. It must be conclusively presumed that it was in the light of these past judicial constructions that the convention acted in framing the new constitution, and in all cases where the provisions of the old were adequate they were ingrafted into the new; but where they had been found to be deficient, and did not meet the will or wish of the people, they were taken down, altered, or amended.

A glance at the constitution of 1838 and its amendments shows that it was silent as to registry laws. Article 3, sections 1, 2, and 3, of the old constitution are among the changed and altered provisions of the new, and it must be presumed that the old constitution, and the judicial constructions given it on the subject of suffrage and elections, were not in harmony with the sentiment of the people of the State. Hence the provisions relating to registration. This is the only material change made. In view of this, the act of 1839, section 65 *et seq.*, referred to in the majority report, is not in point, and can have no weight in determining the question before us, because the whole power relating to registration under the old constitution resided in the legislature; it was unrestricted by constitutional barriers; if it saw fit—as it did—to make an imperative registration law, there was no limitation on its power under the constitution of 1838. This was held in the case of *Patterson vs. Barlow* (60 Penn. St. Rep., 54); this case expressly overrules *Page vs. Allen* (58 Penn. St. Rep., 338), holding otherwise.

In the case of *Patterson vs. Barlow*, *supra*, the supreme court of the State held the rule announced by Chief Justice Shaw, of Massachusetts, in the case of *Capon vs. Foster* (12 Pick., 485), namely, that an imperative registration law, not forbidden by the constitution, was a reasonable regulation, under which the right to vote might be exercised, and was not therefore an additional test to the qualification of electors. (See *Brightly Contested Election Cases*, No. 2, page 51, note —.)

The new constitution expressly fixes and determines the right of all qualified non-registered voters to vote, by saying, "But no elector shall be deprived of the privilege of voting by reason of his name not being registered." We therefore conclude that all provisions of the law set out in the majority report, and cited in this, so far as it attempts (if that is held to be its proper construction) to hold the elector responsible for the act or omission of election officers, regarding registration, or so far as it restricts his right to vote, if he is otherwise qualified, is an additional test of his right to vote, is repugnant to that sacred privilege reserved to each citizen, so aptly expressed in the very words of the con-

stitution, that he shall not be "deprived of the privilege of voting by reason of his name not being registered." This is but a declaration of a fundamental principle laid down in every text-book by every respectable writer, and recognized by all the courts in the land. Judge Cooley expresses it tersely and strongly, as follows:

That one entitled to vote shall not be deprived of the privilege by the action of the authorities is a fundamental principle. (Cooley's Con. Lim., page 616.)

All the cases cited to the contrary are where either the constitution has in terms made registration imperative and jurisdictional, or where the legislature, in the exercise of an unrestrained and unrestricted power, has enacted laws of the same import. (See Brightly's Lead. Cases on Elections, 62, note, *supra*.) In this view of the case the registration laws passed in aid of the constitution must be construed to be directory merely, so far as they touch the right of the voter to exercise the right of suffrage. By giving them this construction they can stand untouched, as not being in conflict with the constitution, and the wise and just provisions of the registry law be maintained; the penal clauses can be enforced against the officers of election, and all the checks and safeguards which they were intended to throw around the ballot can thus be rigidly enforced. (See *State vs. Smith*, 67 Maine, 328.)

We regard section 10 of the election law of Pennsylvania, *supra*, so far as it requires a qualified elector to produce his own affidavit and that of a voter of his election district to his qualifications, directory merely, and in the nature of a law to authorize the board of election, on the day of election, while it is being held, to correct the registry lists theretofore furnished them by the county commissioners, by adding the names of qualified voters thereto who may have been unintentionally omitted. The registry lists and poll-lists will then agree. It is the duty of the election officers to comply with this law. It is imperative on them, and if they fail they subject themselves to the penalties provided in section 12 of the registry law. But to allow a non-registered voter to vote without requiring him to comply with the law, if he is otherwise qualified, is quite a different question. If he refuses to comply on being requested, then it is clearly the duty of the officers to refuse his vote, because he refuses to obey a reasonable regulation prescribed by the legislature, and he hurts no one but himself. But if he is allowed to vote without being required to file the affidavits, and is otherwise qualified, his vote is not an illegal one. The officers of election have simply failed to take and preserve the evidence which the law requires of them; but the failure on their part to take and preserve this evidence does not reach the qualification of the voter. Nor do we believe the courts will hold any such doctrine, for it would be equivalent to holding the evidence of a fact superior to the fact itself.

We think this question, under the present constitution and laws of Pennsylvania, not an open one. The highest court of judicature of the State has decided it; at least it has given a construction to that part of the new constitution under consideration, and we quote therefrom:

The State constitution, article 8, section 1, gives to every citizen possessing the qualifications prescribed the right to vote; and section 7 of the same article provides that no elector shall be deprived of the privilege of voting by reason of his name not being registered. To disfranchise all the voters of the township, as we are asked to do in this petition, the facts on which we are required to act should show a case free from legal doubt. If we by our decision should permit the carelessness, or even the fraud, of officers whose duty it is to furnish a list of voters at the elections to defeat the election and deprive the people of the county of the officer who was elected by a majority of their votes, we would thus make the people suffer for an act in which they *did not* participate and which they did not sanction. In so doing, instead of punish-

ing an officer for the violation of the election law, we practically punish the voters of the county by defeating their choice of a county officer as declared at the election. A decision of this kind would be fraught with danger, by inviting unscrupulous or unprincipled persons on the eve of an important election to secrete or destroy the list of voters or other important papers in a township in which the majority may determine the result in the county. Rules applicable to contested elections, like other legal rules, must be uniform, and the results and consequences of decisions therefore determine their correctness. (Wheelock's case, 1 Norris, 297-9.)

We cannot agree with the majority of the committee in their deductions from this case. We cannot agree either that it is shown by the evidence in the case at bar that the voters were themselves at fault. I challenge the correctness of this finding. The fact is, there is nothing shown in the evidence that any considerable number of voters were in fault at all; but the case stands on evidence of this kind. The registry lists of several voting precincts are introduced in evidence, and then the poll-lists. All the names appearing on the poll-lists, and not on the registry lists, are set down and claimed to be illegal. In this way the 1,000 and upwards non-registered voters are made up. And we undertake to maintain that under the evidence, after all fraudulent votes absolutely proven as having been thrown for each of the parties are taken from their returned vote, the result will not vary far from the returned majority for contestee. So that the question turns on the non-registered votes proven as we have above stated.

Wheelock's case was much stronger, for, after reciting in his petition that the commissioners had failed in their duty in not sending the registry list to the election officers in Freehold Township (upon which statement we infer the recitals in the majority report are predicated), he goes on to recite another very important fact, which is overlooked seemingly in the statement of the majority, which is, "Nor was there then any registry of voters present at the same, whereby the names of the resident taxables and voters of said district could be ascertained." (Wheelock's case, page 298.) This petition was demurred to, and all the facts stated were of course taken on demurrer to be true. Yet the court say that, although there was no registry list at the polls or elsewhere, so far as appears, the people must not be punished for the failure of the officers to do their duty; that the clause "no voter shall be deprived of the privilege of voting by reason of his name not being registered" protects all legal voters in the right of suffrage; and the inference to our mind is irresistible, under this decision, that he is not even *prima facie* an illegal voter because of non-registration.

The contestant assumes that having shown a discrepancy between the registry lists and the poll-lists, and the further fact that affidavits were not on file in the prothonotary's office corresponding to the excess of names on the poll-lists, therefore all persons thus voting were *prima facie* illegal voters. In other words, that it must be presumed the officers of election failed to perform all their duties by the failure to return affidavits of non-registered voters to the prothonotary's office.

The rule of law is that a public officer is presumed to do his duty the contrary not appearing. Under the law there were several acts required to be done by the officers. The first one was to ascertain whether a person offering to vote was registered; if he was not, to require an affidavit of himself and also of a registered voter to certain facts; to see that it was subscribed and sworn; to take and keep it till the election was over, and then return it to the prothonotary's office with certain other papers. To show that the last act was not performed does not show that the rest were left undone, or that proof of failure in this one particular is proof of a failure in all. It doubtless does overcome the

presumption as to the particular act, but we doubt whether it can be extended any further. We are not ready to assent to the proposition that because the election officers failed to return the required affidavits to the office of the prothonotary, therefore they must be presumed not to have required them at all.

Happily, however, it appears in the testimony submitted that in nearly every instance direct proof was made that the officers did require the affidavits, but that they mistook their duty, and, instead of returning them to the prothonotary's office, sealed them up in the ballot-boxes with the tickets, and deposited the boxes with the nearest justice of the peace to the polling-place, as required by law.

At this point an important and interesting question of evidence presents itself, namely, as to whether the burden of proof shifts from the contestant to the contestee after contestant has shown *prima facie* a sufficient number of illegal votes thrown which if cast for contestee would wipe out his majority.

We cannot perceive that the well-known rule contended for applies. To illustrate it we admit that in a case where A is sued on a promissory note by B—plea, payment. To support his plea A offers proof that on the day of or a day subsequent to the maturity of the note he paid B a sum of money equal to the amount due. B admits the receipt of the money, but alleges it was paid for another purpose. The burden now shifts to B, and he must show by preponderating evidence that it was applied on some other debt or for some other purpose than the payment of the note.

But the declaration in contestant's notice is that the contestee received a sufficient number of illegal votes to more than counterbalance his returned majority. Proof that tends to show a number of illegal votes cast in excess of the returned majority for the contestee is not of itself evidence that contestee received them. It does not even raise a presumption to that effect; and when contestee is disconnected with such vote—when he has no lot or part in bringing it about, and exerts no influence in having it cast—he certainly cannot be placed in the position of being compelled to prove a negative in order to maintain his seat. Such a doctrine simply overturns all rules of evidence. We can conceive of cases which might be different, but these cases are not applicable to the one at bar. We know of no safer rule in judicial proceedings than the elementary one that a declarant must prove the material allegations of his declaration, by a preponderance of evidence. Anything short of this is an innovation on all rules of evidence, and must meet with disfavor in all courts where justice is meted out.

We refer now to a very important fact in the testimony. On examination of the record in this case we find that over the date of December 10, 1878, W. F. Reber certifies to having served the contestee with a copy of the notice of contest in this case (see part 1, page 30).

On the 8th of January, 1879, the contestant accepted service of contestee's answer (see part 1, page 108); this would leave 22 days in January and 18 days in February for contestant to take his testimony under the statute.

Under the law of Pennsylvania there are two elections each year; one occurs on the third Tuesday of February and the other on the first Tuesday after the first Monday in November (see section 15, registry act, 1874, page 39). It happened that the third Tuesday of February came on the 18th day of the month in the year 1879; that also happened to be the last day for taking testimony on the part of the contestant. The contestee could not take testimony before the time expired for the

taking of contestant's testimony. Under the laws of Pennsylvania the ballots and other papers relating to the election are required to be sealed up in the ballot boxes after the election is over, and the ballot-box deposited with the nearest justice of the peace to the polling-place. On the morning of the day of the next succeeding election all the contents are directed to be taken therefrom and publicly destroyed by the election officers before the new election begins. The law requires the election officers to take an oath for the performance of this duty (registry, &c., acts, 1874, page 39, section 13, latter part).

The ballots and papers contained in the ballot-boxes must be destroyed, unless required to be kept by an order of the court. (See above act, *ibid.*)

During the taking of the testimony-in-chief in the case it was discovered by both parties to this contest that the election officers had taken the affidavits of non-registered voters as required by section 10 of the registry act, but instead of returning them to the office of the prothonotary as required by law, they had sealed them up in the ballot-boxes. The spring elections being close at hand, and the contestee being anxious to preserve the evidence of the regularity of the election, and for the purpose of preserving the contents of the ballot-boxes for the purposes of this contest, filed his petition in the proper courts of the counties of Centre and Clearfield in January, 1879, praying an order to preserve the contents of the ballot-boxes, that he might be able to serve a subpœna *duces tecum* on the custodians thereof and make proof of the contents. (See copy of petitions in Centre County, page 1451, vol. 2; also order of court, page 1454, vol. 2. As to petition, &c., in Clearfield County, filed January 25, 1879, see printed testimony of Bloom, page 1603, vol. 2.) The contestant, with full knowledge of what the ballot-boxes contained, appeared by counsel in Clearfield County and resisted the petition, and procured the court to deny the prayer thereof. (See printed testimony, page 1603, vol. 2.)

The evidence theretofore taken shows the following facts relative to the contents of the ballot-boxes, namely :

In Benner Township, James Henderson swears that the affidavits were put in the ballot-box. (Page 20, vol. 1.)

In Houtzdale Borough, James S. Munn swears that the affidavits were put in the ballot-box. (Page 530, vol. 1.) Same borough, McNamara swears to the same thing, and that they were destroyed at spring election. (Page 1859, vol. 1.)

In Woodward Township, George W. Quinn swears that affidavits were taken from non-registered voters as required by law, and they were put in the ballot-box. (Page 1873, vol. 1.)

In north ward, Bellefonte Borough, David Bartley swears that non-registered voters were required to make the proper affidavits. They are missing from the prothonotary's office. (Page 1283, vol. 1.)

In many other townships and boroughs the same facts appear, but it would make this report too voluminous to cite them.

In the face of these facts, and knowing the necessity of preserving the papers contained in the ballot-boxes, so that the truth might be ascertained, what excuse can be urged for the contestant in resisting and defeating their preservation? Did not his act compass their destruction? Is he not here asserting the illegality of this vote, and asking the House to unseat the sitting member, when he himself was a party to the destruction of the very evidence which would have settled the question? Does he not stand in the position of the spoliator of documentary evidence asking to take advantage of his own wrong? How

can we say the result is left in doubt when the contestant himself contributed largely thereto? We think it safe to stand on the elementary rule that one asking equity must do equity.

Referring to the point that because at certain polls and precincts 1,000 and more illegal votes were polled—being illegal because they were not registered, and no affidavits were filed as required by law—that therefore the vote at all of the other precincts must be set aside, is a doctrine we cannot assent to. Admitting for the sake of argument that those votes were illegal, we maintain that the true rule is, where illegal votes have been cast, to purge the poll by first proving for whom they were thrown, and thus preserve the true vote; if by the use of due diligence this cannot be done, and the result is still left in doubt, then to throw the poll out entirely. We think this is a safer rule to maintain the purity of the ballot box than the other one, which apporions the *fraud* between the parties. This rule ought to be applied in all cases where the fraudulent vote is considerable and permeates the whole poll, and not in cases where it is scattering and inconsiderable. In those cases it may be justly inferred that the result would not be affected by retaining the poll unpurged. The authorities cited by the majority of the committee, and an almost unbroken line of authorities in Pennsylvania, support this view.

During the forty days which the contestant had for taking testimony he could have introduced in evidence every ballot cast at the polls of which complaint is made. He could, by an inspection of the contents of the ballot-boxes, have ascertained whether the affidavits had been filed as required by law; by making a comparison between these and the registry lists and the poll-list he could have ascertained the exact truth; and as each ballot was numbered, he could have ascertained for whom each illegal vote was cast. He did not do this, but actually aided in the destruction of all these papers, so that the contestee could not show the true state of affairs. He cannot therefore be said to be within the rule of having used due diligence to purge the polls of illegal votes. He cannot bring himself within the McCrary rule of deducting *pro rata* the illegal vote at each poll, for this would increase the returned majority of contestee by many hundreds. He cannot insist on the true rule we have laid down, for that would leave a large majority of polling precincts throughout the Congressional district unchallenged, and would increase the contestee's majority to near 600.

He is therefore driven to the last resort, that of asking that the election be declared void because of the uncertainty of the result, as he claims, in certain specified polling districts. This cannot be allowed, according to my view, for the reasons stated.

If the rule contended for by contestant is adopted, we maintain it must be applied to the polling precincts where contestant alleges the fraud occurred. Then each party is left to prove his vote by calling the voters in the rejected precincts. If they do not, they must stand on the vote of the other unchallenged precincts, and cannot be heard to complain of their own negligence.

To apply either of these rules, as we have seen, confirms the title of contestee to his seat as a member of Congress from the twentieth Congressional district of Pennsylvania to the Forty-sixth Congress.

We recommend the adoption of the following, viz:

Resolved, That Seth H. Yocum is entitled to retain his seat in the Forty-sixth Congress as a member from the twentieth Congressional

district of the State of Pennsylvania, and that Andrew G. Curtin is not entitled thereto.

W. H. CALKINS.
J. WARREN KEIFER.
J. B. WEAVER.

Mr. SPRINGER, from the Committee on Elections, submitted the following

REPORT:

Your committee, to whom was referred the contested-election case of Andrew G. Curtin against Seth H. Yocum, from the twentieth Congressional district of Pennsylvania, having had the same under consideration, beg leave to report:

The committee have carefully examined the questions of law and of fact involved in the case. The pleadings and evidence are very voluminous, the printed testimony covering over 4,000 pages, and the notice of contest, answer, and briefs of counsel about 200 more. The committee have been greatly aided in reaching a conclusion by the able and exhaustive arguments of counsel for the parties and the briefs which they have filed under the rules.

The votes, as returned by the canvassing officers of the district, show that Mr. Yocum received 13,454 and Mr. Curtin 13,381 votes, giving Mr. Yocum a majority of 73 votes, to which it is admitted 7 votes should be added on account of a clerical error in the return from the west ward of Mifflinburg, Union County, making his apparent majority, as shown by the division returns, 80 votes.

Many intricate questions both of law and fact have entered into the inquiry, alike in the taking of the evidence and in the arguments of counsel, which would require a most laborious analysis of this diffused and, in many instances, conflicting testimony, but for the one fact, admitted on both sides, that would rule the judgment of any dispassionate tribunal.

The briefs and arguments of the opposing counsel agree in but one point, but that is the vital one of the case. Taking it as presented on either or both sides, it is shown that votes equal in number to many times the official majority were illegally received, counted, and returned. See appendix to contestant's brief, and list contained in that of the sitting member, commencing on page 21 of Appendix C. In the former a list of about 800 names (*exclusive of Old Armagh and Union Townships, Mifflin County*) is given, which contestant asserts appear on the several poll-lists therein cited without a corresponding registry, or the affidavits required by law as an indispensable substitute in all such cases.

In answer to this the counsel for the sitting member claim that they have reduced his number to 355 (see Appendix B of their brief, page 20), either by showing a registry reasonably approximating to the name of the voter on the poll-list, or by citing testimony showing affirmatively the possession of the constitutional qualification by such unregistered voter. In reply, counsel for contestant show that many of these names have no reasonable correspondence with the registry claimed for them; that in about fifty instances the registry sought to be appropriated be-

longs in fact to another person, and who actually voted upon it himself; and that in over fifty other cases the single remark "*voted on age*," without reference to testimony or other evidence of qualification, is the only reason given for taking them out of the list. Your committee, after a careful comparison, are of opinion that Appendix B of contestee's brief, in connection with the poll-lists cited, shows on its face over 500 unregistered votes in the election divisions attacked by contestant remaining unexplained, unaccounted for, and unqualified by any evidence to which we have been referred.

The sitting member next gives us in his brief another appendix, C, headed "List of unregistered votes in districts giving contestant a majority," in which his counsel undertake to show there were received, counted, and returned in these other divisions 1,848 unregistered votes, without referring to a particle of evidence to show for whom they were cast. In the argument the learned counsel for Mr. Yocum conceded that the number on this list really unregistered was probably not above 1,200, which their opponents claim (and on examination we find them sustained); that names upon the registry lists in question reasonably corresponding to these assailed reduce the actual number to about 400, making the number of unregistered votes received, counted, and returned in the entire district, without any evidence on either side to show either for whom they were cast or that they possessed the constitutional requisites, in the neighborhood of 900 votes, or ten times the certified majority of the sitting member.

We now come to examine the constitution and statute of Pennsylvania, so far as they relate to suffrage and elections :

Constitution of 1873.

ARTICLE VIII.—SUFFRAGE AND ELECTIONS.

SECTION 1. Every male citizen twenty-one years of age possessing the following qualifications shall be entitled to vote at all elections:

First. He shall have been a citizen of the United States at least one month.

Second. He shall have resided in the State one year (or if, having previously been a qualified elector or native-born citizen of the State, he shall have removed therefrom and returned, then six months) immediately preceding the election.

Third. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

Fourth. If twenty-two years of age or upwards, he shall have paid within two years a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.

SEC. 2. The general election shall be held annually on the Tuesday next following the first Monday of November, but the general assembly may by law fix a different day, two-thirds of all the members of each house consenting thereto.

SEC. 3. All elections for city, ward, borough, and township officers, for regular terms of service, shall be held on the third Tuesday of February.

SEC. 4. All elections by the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters, opposite the name of the elector who presents the ballot. Any elector may write his name upon his ticket, or cause the same to be written thereon and attested by a citizen of the district. The election officers shall be sworn or affirmed not to disclose how any elector shall have voted unless required to do so as witnesses in a judicial proceeding.

SEC. 7 [of the above article 8]. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the State, but no elector shall be deprived of the privilege of voting by reason of his name not being registered.



STATUTORY PROVISIONS.

A further supplement to the act regulating elections in this commonwealth.

(See Pamphlet Laws 1874, page 33.)

Sections 1 and 2 direct the mode and manner of making and returning the registry and assessment of electors.

SEC. 3. After the assessments have been completed on the sixty-first day before the Tuesday next following the first Monday of November in each year, the assessor shall on the following day make a return to the county commissioners of the names of all persons assessed by him since the return required to be made by him by the first section of this act, noting opposite each name the observations and explanations required to be noted as aforesaid; and the county commissioners shall thereupon cause the same to be added to the return required by the first section of this act, and a full and correct copy thereof to be made containing the names of all persons so returned as resident taxables in said election district, and furnish the same, together with the necessary election blanks, to the officers of the election in such election district on or before seven o'clock on the morning of the election; and no man shall be permitted to vote at the election on that day whose name is not on said list, unless he shall make proof of his right to vote as hereinafter required.

SEC. 10. On the day of election any person whose name shall not appear on the registry of voters, and who claims the right to vote at said election, shall produce at least one qualified voter of the district as a witness to the residence of the claimant in the district in which he claims to be a voter for a period of at least two months immediately preceding said election, which witness shall be sworn or affirmed and subscribe a written or partly written and partly printed affidavit to the facts stated by him, which affidavit shall define clearly where the residence is of the person so claiming to be a voter; and the person so claiming the right to vote shall also take and subscribe a written or partly written and partly printed affidavit stating, to the best of his knowledge and belief, when and where he was born; that he has been a citizen of the United States for one month, and of the Commonwealth of Pennsylvania; that he has resided in the commonwealth one year, or, if formerly a qualified elector or a native-born citizen thereof, and has removed therefrom and returned, that he has resided therein six months next preceding said election; that he has resided in the district in which he claims to be a voter for the period of at least two months immediately preceding said election; that he has not moved into the district for the purpose of voting therein; that he has, if twenty-two years of age or upwards, paid a State or County tax within two years, which was assessed at least two months and paid at least one month before the election. The said affidavit shall also state when and where the tax claimed to be paid by the affiant was assessed, and when and where and to whom paid; and the tax receipt therefor shall be produced for examination, unless the affiant shall state in his affidavit that it has been lost or destroyed, or that he never received any; and if a naturalized citizen, shall also state when, and where, by what court he was naturalized, and shall also produce his certificate of naturalization for examination. But if the person so claiming the right to vote shall take and subscribe an affidavit that he is a native-born citizen of the United States, or, if born elsewhere, shall state the fact in his affidavit, and shall produce evidence that he has been naturalized or that he is entitled to citizenship by reason of his father's naturalization, and shall further state in his affidavit that he is, at the time of making the affidavit, of the age of twenty-one and under twenty-two years; that he has been a citizen of the United States one month, and has resided in the State one year; or, if a native-born citizen of the State and removed therefrom and returned, that he has resided therein six months next preceding said election, and in the election district two months immediately preceding such election, he shall be entitled to vote although he shall not have paid taxes. The said affidavits of all persons making such claims, and the affidavits of the witnesses to their residence, shall be preserved by the election board, and at the close of the election they shall be inclosed with the list of voters, tally-list, and other papers required by law to be filed by the return judge with the prothonotary, and shall remain on file therewith in the prothonotary's office, subject to examination as other election papers are. If the election officers shall find that the applicant possesses all the legal qualifications of a voter he shall be permitted to vote, and his name shall be added to the list of taxables by the election-officers, the word "tax" being added where the claimant claims to vote on tax and the word "age" where he claims to vote on age; the same words being added by the clerks in each case, respectively, on the lists of persons voting at such election.

SEC. 12. If any election officer shall refuse or neglect to require such proof of the right of suffrage as is prescribed by this law, or the laws to which this is a supplement, from any person offering to vote whose name is not on the list of assessed voters, or

whose right to vote is challenged by any qualified voter present, and shall admit such person to vote without requiring such proof, every person so offending shall, upon conviction, be guilty of a misdemeanor, and shall be sentenced for every such offense to pay a fine not exceeding five hundred dollars, or to undergo an imprisonment not more than one year, or both, at the discretion of the court.

SEC. 13. Whenever a place has been or shall be provided by the authorities of any city, county, township, or borough for the safe keeping of the ballot-boxes, the judge and minority inspector shall, after the election shall be finished, and the ballot box or boxes containing the tickets, list of voters, and other papers have been securely bound with tape and sealed, and the signatures of the judge and inspectors affixed thereto, forthwith deliver the same, together with the remaining boxes, to the mayor and recorder of such city, or in counties, townships, or boroughs to such person or persons as the court of common pleas of the proper county may designate, at the place provided as aforesaid, who shall then deposit the said boxes and keep the same to answer the call of any court or tribunal authorized to try the merits of such election. Whenever the election officers of any election district shall require the election boxes of such district to hold any election which by law they are or shall be required to hold, they shall keep the same securely in their possession without opening, until the morning of such election, and until they shall severally be sworn or affirmed not to disclose how any elector shall have voted, and after being so sworn or affirmed they shall open the said boxes and burn and totally destroy all the ballots and other papers which they shall find therein, before proceeding to hold such election.

The evident object of the law-making power of Pennsylvania in the passage of the foregoing statute was this: Such had been the looseness theretofore in receiving parol evidence as to the right of persons to vote on the day of election, and such was the difficulty of indicting persons for perjury on such parol evidence, that it was deemed necessary to provide by law that the proof of an elector's right to vote should no longer rest on parol evidence, but that the voter, in order to establish by competent evidence his right to vote, should file a written or printed affidavit of himself as to his qualifications, and also the written or printed affidavit of another qualified voter of the same election district as to his residence in the precinct for two months immediately preceding the election.

The authorities are uniform to the effect that all statutes are mandatory which cannot be disregarded without ignoring the legislative intent. The will of the legislature cannot be carried out unless this provision of the statute is complied with, and to disregard it is to disregard one of the safeguards which the law-making power of Pennsylvania deemed necessary for the protection of the ballot.

It is contended by counsel for the sitting member that the requirements of sections 3 and 10 above set forth are merely directory, and a disregard of them does not invalidate the vote cast without compliance with its provisions. But your committee cannot agree to this view of the law. The true line of distinction as to whether a statutory provision is mandatory or merely directory in its nature is laid down in *Smith on Statutes* and other well-known authorities:

It is to be presumed that the legislature intended to make such acts imperative in all cases where the object aimed at could not be attained unless the act should be construed as imperative. (*Smith on Statutes*, sec. 680, p. 735.)

By directory provisions is meant such as are to be considered as giving *directions which ought to be followed*, but not as so limiting the power in respect to which the directions are given that it cannot be effectually exercised without observing them. (*Cooley on Const. Limitations*, 74.)

Statutory requisitions are deemed directory only when they relate to some *immaterial* matter, where a compliance is a matter of convenience rather than of substance. (*People vs. Schoemerhorn*, 19 Barb., 558.)

We find no Pennsylvania decisions on this point since the adoption of the new constitution, and the consequent modification of the laws regulating the suffrages, in 1874; but Judge Allison, a jurist of conceded ability and experience, in disposing of the Philadelphia contested-elec-

tion cases of 1867 (reported in 1st Brewster, 171, *et seq.*), places a judicial construction upon the law of 1839, then in force in Pennsylvania; and for the purpose of ascertaining how far the ruling in that case would apply to the corresponding provisions of the act now under consideration we place them side by side:

Act of 1839, sec. 65, §c.

No person shall be admitted to vote whose name is not contained in the list of taxable inhabitants furnished by the commissioner aforesaid, unless, &c. (Brightly, Digest, vol. 1, pages 548, 549, pl. 43.)

SEC. 66. In all cases when the name of the person claiming to vote is not found on the list furnished by the county commissioners and assessor, or his right to vote, whether found thereon or not, is objected to by any qualified citizen, it shall be the duty of the inspector to examine such person on oath as to his qualification, and if he claims to have resided within the State for one year or more, his oath shall be sufficient proof thereof, *but he shall make proof by at least one competent witness*, who shall be a qualified elector, that he has resided within the district for more than 10 days next immediately preceding said election, and shall also himself swear that his *bona fide* residence in pursuance of his lawful calling is within the district, and that he did not remove into said district for the purpose of voting therein. (Same, page 589, sec. 66, page 44.)

"These requirements" [referring to the act of 1839], says Judge Allison (1 Brewster, 174), "are in no proper sense directory merely; they are, in all particulars in which the law directs that they shall be ascertained before the vote shall be received, absolutely essential to a due election."

"As to one class of voters, the law makes the assessment list furnished to the election officers *prima facie* evidence, but *prima facie* only of their right to vote. As to all others claiming the right, THE LAW'S DIRECTION IS IMPERATIVE: *no person shall be permitted to vote whose name is not on the list of taxable inhabitants furnished by the city commissioners, unless he make the proof to which we have referred.*"

Judge King, in the Kneass case, remarks of this class of voters:

The language of this law is so clear, and the policy of it so obvious, that it admits of no construction qualifying its letter as respects persons not found on the list. It is from votes offered by this class of persons that the greatest danger of election frauds arises. * * * *A rigid and faithful execution of this part of the election law is absolutely indispensable to a fair election.* (2 Parsons, 580.)

Let it be remembered that the statutory provision immediately in question is the one which occurs at the close of the third section of the act of 1874, enacted to give effect to the additional checks and safeguards which the people of Pennsylvania manifestly intended to throw around the ballot-box by their amended constitution, then just adopted by an unprecedented majority. The clause in question is in these words: * * * "And no man shall be permitted to vote at the election on that day whose name is not on said list, unless he shall make proof of his right to vote as hereinafter required." That is, according to the requirements of section 10 of same act, which section is hereinbefore quoted in full.

Act of 1874, sec. 3, §c.

* * * No man shall be permitted to vote at the election on that day whose name is not on said list unless he shall make proof of his right to vote as hereinafter required. (Pamphlet laws of Pennsylvania for 1874, page 33.)

SEC. 10. On the day of election any person whose name shall not appear on the registry of voters, and who claims the right to vote at said election, shall produce at least one qualified voter of the district as a witness to the residence of the claimant in the district in which he claims to be a voter, which witness shall be sworn or affirmed and subscribe a written or partly written and partly printed affidavit to the facts stated by him, which affidavit shall define clearly where the residence is of the person so claiming to be a voter; and the person so claiming the right to vote shall also take and subscribe a written and partly printed affidavit, stating, &c. (the possession of the constitutional requisites in regard to age, citizenship, residence, and payment of tax). (*Ibid*, 35.)

Now, with all due respect for those who differ with us, we submit that there can be no *directory provisions* in a statute in regard to that which the statute itself forbids being done at all.

Construction can never abrogate the text; * * * it can never fritter away its obvious sense; * * * it can never narrow down its broad limitations; * * * it can never enlarge its natural boundaries. (Story on Constitution, section 407.)

The right rule of construction is to intend the legislature to have meant what they have actually expressed, unless *some manifest incongruity would result from doing so*, or unless the *context clearly shows that such a construction would not be the right one*. (Jackson *vs.* Lewis, 17 Johnson, 475.)

The result of all the authorities is that all constitutional provisions in statutes defining what the *voter himself* must do, both as to qualifying himself as an elector and furnishing the quality and quantity of evidence thereof which the law demands, is mandatory, jurisdictional, and in the nature of conditions precedent, while those which merely relate to the conduct of the *election officers* may or may not be directory according as they may or may not appear to affect results, and according as they may or may not seem to have been regarded by the law-making power as essential and necessary safeguards against the mischief the statute was intended to prevent. Thus in *Morris vs. Haines* (2 N. H., 246), where the statute required State officers to be chosen by a check-list, and by delivery of the ballots to the moderator in person; and it was held that the requirement of a check-list was mandatory, and the election in the town was void if none was kept. The decision was put upon the ground that the check-list was provided as an important guard against indiscriminate and illegal voting, and the votes given by ballot without this protection were therefore as much void as if given *viva voce*.

The following is the concluding portion of the opinion:

If at an election of Representative the check-list be flung aside and votes are indiscriminately crowded into the ballot-box without an inspection by the moderator, it must be obvious to all observing citizens that every evil which the statute was designed to remedy is likely to happen, and that two prominent provisions of it will be trampled under foot. Votes so given and received are neither given nor received in conformity to the essential requisitions of the statute, and such requisitions being violated, the votes must be void. They would be no more void if given *viva voce* rather than by ballot. If such a neglect of the statute will not render the whole proceedings void, what neglect will have that operation? The whole balloting, therefore, in this manner is vitiated. No Representative can thus be duly elected.

Wheelock's case (1 Norris, 299), cited by counsel for the sitting member, is not, when carefully examined, in conflict with the other authorities heretofore referred to. In that case the voters appear to have been regularly registered and the registry duly filed in the place designated by law. The electors by getting themselves placed on it had *prima facie* done all that the law demanded of them. They had furnished all the proofs of their right to vote required by the statute until that right was challenged by a "qualified citizen of the district." They were in no respect in default. But the county commissioners had neglected to furnish the election officers with a certified copy of the registry duly filed in their office, as the law required them to do, and it was not alleged in the case that challenges were made or disregarded.

What distinguishes this case from those relied upon by the contestant's counsel is the all-important and controlling fact that in the latter the *voters themselves* were in default, while in the former it was the county commissioners. It is the clearest misapprehension of this case to apply what is there said in reference to the effect of omissions or mistakes of officers in preparing and supplying election papers to the case of voters who fail to furnish the evidence of their right to participate in the choice of public servants required by the statute as an indispensa-

ble substitute for registration. What is said by Judge Allison in the Philadelphia election cases of 1867, hereinbefore cited, and to be found in 1 Brewster, pages 171, 172, is peculiarly applicable to this phase of the question:

The elector's privilege is not a mere constitutional abstraction, but it is to be exercised in subordination to law, and on proof of title of the person claiming its exercise. The right, however well founded in fact, may be lost for want of *such evidence of title as the law demands*, just as the possession and enjoyment of property, secured by the declaration of rights to the citizen, may be taken away or withheld from him *for the want of the necessary evidence of ownership*.

It is to enable the honest voter to secure to himself his constitutional privilege, to protect him against its loss by fraud, mistake, or negligence on the part of others, that laws have been passed providing for an examination into the result of an election at the instance of qualified voters who have reason to believe that an undue election had been held.

This legislation is therefore not to be regarded as hostile to the exercise of a right conferred upon the citizen by the supreme law of the land, but, on the contrary, as an aid of and a protection to it. The design is to prevent its being nullified by illegal or fraudulent votes.

The vote of an elector may be as certainly lost to him by an illegal ballot going in with it as though he had been prevented by force from voting or his right unlawfully denied to him at the polls.

The case of *Doerflinger vs. Hilmantel* (21 Wisconsin, 566) is precisely in point. The statute of Wisconsin is as follows:

No vote shall be received at any annual election in this State unless the name of the person offering to vote be on the registry made on the Tuesday or Wednesday preceding the election, unless the person offering to vote shall furnish to the board of inspectors his affidavit, in writing, giving his reasons for not appearing on the day for correcting the alphabetical list, and prove by the oath of a householder of the district in which he offers his vote that he knows such person to be an inhabitant of the district, and, if in any incorporated city or village, giving the residence of such person within said district. (Sec. 7, ch. 445, Laws of 1864.)

In the case of *Doerflinger vs. Hilmantel* it appeared that over 500 votes were received in Milwaukee from persons whose names were not on the register, no one of whom gave to the inspectors receiving his vote his residence within the district, either by his own affidavit or by the oath of a householder of such district. The court, by Chief Justice Dixon, the entire court concurring, said:

It is furthermore alleged that of those 544 votes 145 were received from persons no one of whom proved to the inspectors receiving his vote by the oath of a householder of the district that he knew such person to be an inhabitant of the district, nor did any one of them furnish the inspectors any proof upon oath that he was a resident of the election district. It will be seen from these statements, not that there was a total want of proof or an attempt to evade the requirements of the act, but only that the proofs were in some particulars defective. It is not, therefore, a question whether the statute may be wholly disregarded or dispensed with by the inspectors, but whether when an attempt is made in good faith to execute it a mistake in the execution or any departure, however slight, from the terms of the statute will vitiate the proceedings and annul the votes so irregularly received. In other words, it is a question whether the voters are disfranchised by any such mere irregularity or error in the proceedings. This is the precise question, as I understand it. I say the precise question, because no fraud or intentional misconduct on the part of any one is alleged, nor is it alleged that there was any inherent disqualification in the persons who gave the votes. They were qualified electors of the district, entitled under the constitution and laws to vote at the election, except that their votes were not received in the form prescribed by the statute. As to one hundred and forty-five of them, the fact that they were inhabitants of the district was not proved before the inspectors; and as to the others, their particular places of residence within the district were not given. As to all of them, the inspectors may have acted upon their own knowledge of the facts, and thought that proof was unnecessary. Such being the technical, and, as it seemed to me, purely formal, nature of the objections, I must say that I was surprised to hear counsel at the bar insist that those votes must now be rejected. I had not then examined the act, and it was contrary to all my notions of the intention and effect of election laws, derived from the decisions of this and other courts upon other statutes on the same sub-

ject. I supposed the question before the courts always was, who received the greatest number of votes for the office from the legally qualified voters, without regard to any matter of mere form or want of form in the receiving, canvassing, or return of the votes; and that to hold the contrary would be, as has been very pertinently said, to place a higher value on the statute regulation than on the right itself—to sacrifice substance to form. This construction of former statutes, that they were directory and not imperative, and therefore not jurisdictional on the part of the officers conducting the elections, is well known. For the sake of justice upon the facts here pleaded I regret that this act does not admit of the same construction. It seems certainly a very severe regulation which excludes the votes of legally qualified voters under such circumstances. But on examining the act I am satisfied that it cannot be so construed. It is essentially an imperative statute, and deprives the inspectors of all jurisdiction to receive the votes of unregistered voters, unless the conditions as to the affidavit and oath are fully complied with. And first it is to be observed that there is a material difference between this and former statutes. They were regulations of the time and manner of conducting elections, designed for the government of the officers having charge of the polls. No duty was imposed upon the voters except that of going to the polls and depositing their votes. It was considered that the voters ought not to forfeit their privileges or lose their votes by reason of the mistakes or misconduct of the officers, which it was out of the power of the voters to remedy or prevent. By this act, however, every voter is made or may become an agent in the execution of the law. Copies of the register as made by the board are filed in the office of the town, village, or city clerk, and posted in some conspicuous place in the room in which the meeting is held, so as to be accessible to any elector who may desire to examine the same or make copies thereof. On Tuesday preceding the general election a meeting of the board of registry is held at the place designated for holding the polls of election, for the purpose of revising, correcting, and completing the lists. Any elector of the district whose name has been omitted may appear at such meeting and cause the same to be entered upon the register. If he does not so appear, and still desires to vote, he must furnish the inspectors at the polls his affidavit, giving his reasons for not appearing on the day for the correction of the register, and likewise prove by the oath of a householder of the district that he knows him to be an inhabitant of the district, and, if in an incorporated village or city, give his residence within the district. In this matter of a voter whose name has been omitted, and who has not appeared on the day for the correction of the register, the burden of answering the requirements of the law by furnishing the affidavit and proof is thrown upon the voter himself. He is presumed to know the law, and must go to the polls prepared to comply with its conditions; and if he does not, and his vote is lost, it may, so far as it is the fault of any one, with justice be said to be his own fault. It is in the nature of a penalty imposed by the law for his neglect to do what is required of him. The inspectors cannot receive his vote, and, if they cannot, it cannot afterwards be received and counted by the courts.

And next it is to be observed that it is a negative statute. It has been said on very high authority that negative words will make a statute imperative. (Dwarris on Statutes, 715; 7 Law Lib., 55, and cases cited.) The words of the act are: "No vote shall be received at any annual election in this State unless," &c. It is difficult to conceive any language more strongly imperative than this. (21 Wisconsin, pages 568-9-70-71.)

In the Philadelphia "*Locust ward case*," where the polls had been kept open and votes received after the hour prescribed by the statute, Judge Parsons (another eminent Pennsylvania jurist, who has been indorsed in the highest terms by the counsel on both sides of this case in the course of their arguments), after showing that the direction to close the polls at 10 p. m. was imperative, closes an able and exhaustive opinion, in which the whole court, then consisting of five law judges, concurred (having previously distinguished the case then before the court from one where the number of votes thus illegally received, counted, and returned was clearly ascertained to be less than the certified majority), as follows:

But where the majority for the candidate is small, and the evidence of such a character as to render it uncertain as to the number of votes polled after the hour when the election should have been closed, when there is imprecision as to the true state of the case and the result rendered thereby uncertain, and it is thereby rendered doubtful who has a majority of the votes polled within the time prescribed by law, then in such a case, it is unquestionably our duty to set the election aside, and refer the election back to the people. *In all these principles the whole court fully concur, and, we settle it as the law, so far as our judgment makes it certain.*"

See also Cushing's (Mass.) Election Cases, Dighton case, 175, &c.; Andover case, 207. See also 1 Brewster (*ante*), 179, 180. Wheelock's case (1 Norris, 299), cited and relied upon by the counsel for the sitting member on account of having been subsequent to the adoption of the new constitution of Pennsylvania, is in full accord on this point with the earlier cases. We quote:

When, however, it is alleged that there is actual fraud in the election, or that the ballot-box has been tampered with, or *illegal votes received, or the careless or fraudulent acts of the officers have mixed and confused the ballots*, the duty of the court is equally plain, and every legal facility should be afforded to purge the poll; and when the acts of the officers are so fraudulent and *irregular that the result cannot be ascertained*, then the entire poll is rejected.

The contestant alleges, independently of the non-registered vote, that he has proven 240 illegal votes to have been cast for the sitting member and admits that 61 have been shown to have been received by himself, which would elect him by 99 majority, provided the remaining votes returned for him after deducting these 61 were all cast by duly qualified voters, which he does not claim to have shown by legal evidence.

On the other hand, the sitting member admits that 29 illegal votes were proven to have been received by him, not considering the non-registered vote, but claims that he has shown by competent evidence that 328 illegal votes were cast for his opponent, which would make his majority 379, provided the votes remaining after deducting these 29 were all cast by duly qualified voters, which he on his part does not claim to have shown by any evidence in the case.

But when we take into consideration the number of non-registered votes, or the votes cast by persons whose names do not appear upon the registry list, and who did not furnish the proof of right to vote required by the statute, which by the contestee's brief, Appendix B, appear to be over 500, we cannot concede either the contestant's claim of 99 majority or the contestee's claim of 379 majority of the legal votes cast, for the reason that, conceding all the contestee claims, yet we must determine what disposition shall be made of the non-registered vote, which is much greater than the majority claimed by the sitting member.

It is contended by contestee's counsel that the contestant failed to use due diligence in this, that he did not cause the ballots to be produced, and thus show for whom the non-registered electors voted, and that contestant's resistance, through his counsel, to the legal proceedings instituted by contestee for the production of the ballots was evidence of his well-grounded fears that the facts when disclosed might show that he was not elected.

These objections to contestant's right to the seat would have been well taken were it not for the fact that the 4,000 printed pages of evidence in this case show most extraordinary diligence on the contestant's part to account for and explain every alleged illegal voter, and 1,100 pages, comprised in part 4, are almost exclusively devoted to evidence taken to explain for whom the non-registered persons cast their ballots. But notwithstanding the immense mass of testimony taken, it appears that the great number of voters in question rendered it impossible within the time prescribed by law for taking testimony to explain for whom all the non-registered persons voted. Whenever it was possible to explain for whom non-registered persons voted such explanation has been given, and the voter when found to be duly qualified has been taken from the non-registered list, and such list still remaining re-

lates to those in whose cases no evidence appears explaining how they cast their votes. It is true that the record fails to disclose for whom these persons voted, and if the failure is to be charged to any one, the contestee is equally at fault with the contestant. They are, therefore, both in such default that neither has the right to claim the seat when it appears that there are illegal votes in the returns unaccounted for which are greater in number than the returned majority of the sitting member. The people of the district have rights which cannot be compromised by any failure, whether avoidable or unavoidable, either of the contestant or the contestee. They have the right to be represented by the person, and no other, who has received a majority of the legal votes of the district.

It having been determined that a large number of persons voted at the election who did not comply with the statute as to the proof of their right to vote, and the number of such ballots cast being largely in excess of both the returned majority of the sitting member or the revised majority which he claims in his briefs, and the evidence not showing for whom such votes were cast, we must determine upon what rule the polls must be purged of such illegal non-registered votes. McCrary, in his Treatise on Elections, section 300, page 225, lays down the following rule:

It would seem, therefore, that in a case where the number of bad votes proven is sufficient to affect the result, and in the absence of any evidence to enable the court to determine for whom they were cast, the court must decide upon one of the three following alternatives, viz:

1. Declare the election void.
2. Divide the illegal votes between the candidates in proportion to the whole vote of each.
3. Deduct the illegal vote from the candidate having the highest vote.

And it is clear also that where in such a case no great public inconvenience would result from declaring the election void and seeking a decision by an appeal to the electors, that course should be adopted.

It will be seen from all the authorities that where a new election can be held without injury it is the safest and most equitable rule to declare the election void and refer the question again to the people in all cases where there are a greater number of illegal votes proven, but for whom they voted does not appear, than the returned majority of the incumbent. In this case, it appearing that a number of votes many times greater than the official majority of the sitting member were illegally received, counted, and returned, in violation of the constitution and mandatory statutes of Pennsylvania which were adopted for the purpose of securing the purity of the ballot-box and preventing frauds at elections, and the true result of the election by the legal voters of the district has not heretofore been ascertained, and cannot, from the nature of the case, be ascertained upon the facts presented in the record, your committee recommend that the election be declared void, in order that the people of the twentieth Congressional district of Pennsylvania may have an opportunity of again expressing their choice for a Representative in Congress. Your committee therefore recommend the adoption of the following resolution:

Resolved, That the election held in the twentieth Congressional district of Pennsylvania in November, 1878, for a member of this House, be, and the same is hereby, declared null and void, and the seat now occu-

pied by Seth H. Yocum declared vacant until filled by the people of said district in conformity with law.

All of which is respectfully submitted.

WILLIAM M. SPRINGER.
VAN H. MANNING.
ALVAH A. CLARK.
EMORY SPEER.
W. G. COLERICK.
R. F. ARMFIELD.
F. E. BELTZHOOVER.
SAMUEL L. SAWYER.

VIEWS OF THE UNDERSIGNED MEMBERS OF THE COMMITTEE ON ELECTIONS IN THE CONTESTED-ELECTION CASE OF CURTIN V. YOCUM.

The undersigned have not been able to read all the testimony in this case; they were not on the subcommittee to whom it was referred, and from whom it was reported to the full committee as depending upon questions of law arising from facts said to be undisputed by both parties. To the general reasoning of the report of the minority of the committee we assent. We think, however, that the registry law of 1874 is a valid law under the constitution of 1873. We think also that the requirements in that law of affidavits from persons not on the registry list in order to enable them to vote are mandatory, and that the requirements for the return of papers, affidavits, &c., are directory; that as it is made a crime on the part of the election officers to permit a non-registered person to vote without requiring the legal proof of qualifications, the strong presumption is, in the absence of evidence, that such officers have properly performed their duties in that respect. The law of Pennsylvania requires that the elections be held by one judge and two inspectors, and that on petition of five or more citizens two overseers of election of different political parties be appointed. These are the election officers. Each inspector appoints a clerk. After the election is finished, the ballot-boxes containing "the tickets, list of voters, and other papers," securely sealed, must be delivered to the mayor and recorder of cities, and in counties, townships, and boroughs to such person as the court of common pleas may appoint at a place provided, whenever the authorities of such city, county, township, or borough have provided a place therefor, who shall "keep the same to answer the call of any court or tribunal authorized to try the merits of such election." If no such person is appointed, then we understand that they must be delivered to the nearest justice of the peace. The affidavits of non-registered voters are required to be filed by the return judge with the prothonotary, to remain on file in his office subject to examination as other election papers are. The officers of election at the close of the polls count the votes; make triplicate returns, with a return sheet in addition; declare publicly the votes, and post up the same on the door of the election house. The triplicate returns are inclosed each in an envelope and sealed, and one envelope, with the unsealed return sheet, containing also one list of voters, tally-papers, &c., is given to the judge, and another to the minority inspector. These judges, who are the judges of election, and are elsewhere called return judges, are required, in some cases on the first day and in others on or before the second day after the election, to deliver said returns to the prothonotary of the court of com-

mon pleas of the county, and on 12 o'clock of said second day the prothonotary is required to present said returns to the court of common pleas, who canvass the returns. In case any return is missing, or in case of complaint by a qualified elector charging palpable fraud or mistake, or when fraud or mistake is apparent on the return, and if in the judgment of the court it shall be necessary to a just return, the court is required to issue summary process against the election officers and overseers to bring them forthwith into court, with all election papers in their possession—

And if palpable mistake or fraud shall be discovered, it shall, upon such hearing as may be deemed necessary to enlighten the court, be corrected by the court, and so certified; but all allegations of palpable fraud or mistake shall be decided by said court within three days after the day the returns are brought into court for computation, and the said inquiry shall be directed only to palpable fraud or mistake, and shall not be deemed a judicial adjudication to conclude any contest now or hereafter to be provided by law. And the other of said triplicate returns shall be placed in the box and sealed up with the ballots. (Registry law, 1:74.)

It is to be noticed that it is not the election officers, but only one of them, viz, the return judge, who is required to file the affidavits and other papers with the prothonotary, and within two days after the election the court of which the prothonotary is clerk are required to canvass the returns, and in case of complaint by an elector or for other causes, as has been before stated, the court may order all election papers before them and have a summary hearing. In a case such as this is, where direct evidence was accessible, and in the absence of any evidence that the voters we are considering were challenged, or that any complaint was made to the court, or that any cause for a summary hearing appeared or was shown to the court, we think that it is inadmissible to infer and find that the election officers committed the crime of permitting non-registered persons to vote without requiring affidavits, merely from the fact that a copy of the registry list obtained from the commissioners' office has less names on it than are on the list of voters, and from the further fact that either there is no evidence that the affidavits of the non-registered voters were or were not taken, or there is evidence that these affidavits were not found on file in the office of the prothonotary. It is wholly on this inference and finding, and on the burden of proof, that, as we understand, the foundation of the report of the majority of the committee rests. The majority also adopt the theory, not of throwing out the precincts the legal votes of which they find to be uncertain, but of declaring the whole election void. They also do not undertake to apportion the presumed illegal votes.

In Centre County it is said in the brief of the contestee, p. 24, that the registry list used, and, as we understand, required to be put in the ballot-box, was received by the election officers directly from the assessors, so that the copy from the commissioners' office would not necessarily contain the names which the assessors were authorized and required by law to add. The evidence that in some precincts the affidavits were put in the ballot-boxes is referred to in the report of the minority.

That direct evidence was easily obtainable by the contestant from the ballot-boxes to show how every presumed or proved illegal voter voted, as well as to show the discrepancy between the registry lists actually used at the polls and the list of voters, appears from the statutes hereafter cited. It also appears that the election officers could be compelled to testify whether they took affidavits or not, in addition to any testimony that might have been obtained from the alleged illegal voters or any other person, and in addition to the evidence of the taking of affidavits which an examination of the ballot-boxes might have disclosed.

The eighth section of the registry law of 1874 requires that "every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the clerks on the list of voters opposite the name of the elector from whom received." The ballot-boxes should contain, besides the ballots, "the list of voters and other papers," and are required, as has been stated, to be kept securely bound with tape and sealed, to "answer the call of any court or tribunal authorized to try the merits of such election," unless when required for the purpose of holding another election, and then on the morning of such election all the contents of the ballot-boxes are to be burned and totally destroyed. (Section 13 of the registry law.) We understand this thirteenth section to mean that if the ballot-boxes are "called" by any proper court or tribunal authorized to try the merits of such election before they are required to be used at the subsequent election, then they are to be held to answer such call; otherwise the old ballot-boxes are used at the election to be held, the contents being destroyed on the morning of such election.

An inspection of the ballots in the boxes and a comparison with the list of voters by the numbers would show how every person voted. The opening of the ballot-boxes would, of course, also show whether any affidavits had been put in as a part of the "other papers."

The nineteenth section of this registry law provides that "in trials of contested elections, and in all proceedings for the investigation of elections, no person shall be permitted to withhold his testimony on the ground that he may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings except for perjury in giving such testimony." (See also sections 103 and 859, Revised Statutes United States.)

Illegal voters can be compelled to testify for whom they voted.

The careful provisions of the Pennsylvania election laws were framed apparently for the purpose of making it possible in every case to ascertain what illegal votes were cast, and for whom cast, so that in each precinct the poll could be purged of the illegal voters.

The burden of proof, even if the doctrine of declaring an uncertain election void be adopted, is, we think, as stated by the minority, on the contestant to show that more illegal votes than the returned majority of the sitting member were cast, and either that they were cast for the sitting member or that it is impossible to ascertain for whom they were cast, and this impossibility is an actual impossibility arising from the circumstances of the case, which could not have been remedied by the use of due diligence, and not an impossibility arising wholly from the absence of evidence that could have been taken. The party having the burden cannot by his own neglect create the impossibility. The report of the majority on this point cites McCrary on Elections, page 225, section 300, but that report does not quote what almost immediately follows the clause quoted, viz:

Let it be understood that we are here referring to a case where it is found to be impossible by the use of due diligence to show for whom the illegal votes were cast. If in any given case it be shown that the proof was within the reach of the party whose duty it was to produce it, and that he neglected to produce it, then he may well be held answerable for his own neglect; and because it was his duty to show for whom the illegal votes were cast, and because he might by the use of reasonable diligence have made this showing, it may very properly be said that he should suffer the loss occasioned by deducting them from his own vote.

On page 227 Mr. McCrary says:

We think the safer rule would be for the contestant to show not only that a certain number of illegal votes were polled, but also to show, if he can, that they were cast for his opponent. It is not intended by this to assert that the rule above quoted from

Duffey's case is positively erroneous, but only to intimate a doubt, and to express the opinion that the ordinary principle which requires the party holding the affirmative to prove the facts and all the facts necessary to make out his case is the better rule, and that it will in all cases be safer to follow it.

In this case the facts set out in the report of the minority show peculiar reasons why the opinion expressed by Mr. McCrary should be adopted.

The forty days given by the statute of the United States to the contestant to take his testimony-in-chief expired on the 18th day of February, the day of the election of certain township and other officers in Pennsylvania. The time of the taking of testimony by the contestee did not begin until the day after said election. Unless the ballot-boxes could be held "to answer the call of any court or tribunal authorized to try the merits of such election" before the morning of the 18th day of February, the contents of the ballot-boxes would be totally destroyed. The contestant not only took no steps, either by a subpoena *duces tecum* in this case or by an application to a court of general equity jurisdiction, to preserve the contents of the ballot-boxes, but resisted the attempt made by the contestee to have them preserved in certain counties, as set out in the report of the minority.

This case is so voluminous as to require many weeks to read the testimony and determine all the controverted facts alleged to be material by one party or the other. On the facts reported to be conceded or undisputed by both parties, which are the foundation of the reports made to this House, we think the election ought not to be declared void, and no one contends that on these facts Mr. Curtin ought to be seated. If the House is to take final action on the case upon the reports now made we think the resolution reported by the minority should be adopted.

W. A. FIELD.
E. OVERTON, JR.
J. H. CAMP.

IGNATIUS DONNELLY vs. WILLIAM D. WASHBURN.

THIRD CONGRESSIONAL DISTRICT OF MINNESOTA.

Charges of bribery and coercion and intimidation of voters, and the counting of illegal votes by the canvassing officers.

Held, That bribery was committed on behalf of contestee, and that bribery committed by contestee, or by any agent of contestee, with or without the knowledge or direction of his principal, renders the election void.

Held, That numbered ballots must be rejected, because the numbering of same was done to prevent a fair election and to intimidate voters.

Held, That where votes are canvassed and return made by a board constituted differently from that provided by law the returns must be rejected and the vote thrown out.

Held, That the returns of the votes cast in the "county of Polk and Kittson" must be rejected, because there is no "county of Polk and Kittson" in Minnesota, but separate counties, Kittson being unorganized and not attached to Polk County for any purpose.

The vote of Polk County alone cannot be determined from the returns or the evidence.

[NOTE.—This case was reported to the House on June 16, 1880; was recommitted to the Committee on Elections and ordered to be printed. No further action was taken by the House in this case.]

JUNE 16, 1880.—Mr. MANNING, on behalf of the majority of the Committee on Elections, submitted the following

REPORT:

Views of certain members of the Committee on Elections in the contested-election case of Donnelly vs. Washburn, from the third Congressional district of Minnesota:

The undersigned have carefully examined the questions of law and fact involved in the case.

BRIBERY.

The first question which they considered was the question of bribery.

They find that bribery was committed on behalf of the sitting member, Mr. Washburn, by his friends, by members of his district committee, and by personal, political, and business agents; that this bribery was not confined to any portion of the district, or to any one town or county, but that it extended throughout a region of country nearly 400 miles long and 100 miles wide; and they further find that in many cases the bribery has been traced home directly to Mr. Washburn himself. The committee give herewith an abstract of the testimony in some of these cases.

Charles Berens, a Democrat, the postmaster of the village of North

Prairie, Morrison County (situated about 100 miles from Minneapolis), testifies (page 300, printed testimony) that prior to the election of November 5, 1878, he wrote and mailed a letter *directly to the sitting member, Washburn*, in which he said that he would give his support at the election to him, Washburn, for \$50. This letter evidently reached the sitting member, for Berens testifies that he received a letter in reply to it from Keith, the postmaster at Minneapolis, a political friend of the sitting member, in which Keith said "he was glad that Berens would work that way." He, Keith, further stated that he would give Berens's letter to J. V. Brower, one of the Republican United States land officers at Saint Cloud, and that Brower would attend to the matter. J. V. Brower testifies (page 246):

Charles Berens wrote a letter to Minneapolis demanding \$50 for which he was to support General Washburn [the sitting member]. The letter was sent to me by some one in connection with the campaign; I can't say whether by the committee or by General Washburn or by some one for them.

Brower admits the receipt of \$50 from Washburn or his committee, and may have got more. Berens (page 300) and Brower (page 246) both agree that Brower visited North Prairie, Morrison County, and called on Berens; Berens says: "Brower said I should work for Washburn and he would see me all right." He says Brower did not pay him any money because he, Brower, did not trust him—he thought he was supporting Donnelly. Brower testifies:

I advised General Washburn [the sitting member], or some one for him, after I had been advised that no arrangements of that character could be entered into [that is, the purchase of Berens's support for \$50], or words to that effect, that he should not enter into such arrangements with Charles Berens, or any one else.

Here it is clearly established that there was a negotiation between a Democratic voter and Mr. Washburn, the sitting member, the one to sell his vote (for his vote is implied in his "support") for \$50, and the other to buy it. The letter is answered for Washburn by Keith, his friend; the proposition is accepted with thanks, and the letter is delivered to a Federal official, who goes, with the letter and with Washburn's money, or the money of Washburn's committee, in his pocket, to see the party and consummate the transaction. The offense of bribery was complete when one party offered to sell his vote and the other agreed to buy it. (See Russell on Crimes, volume 1, page 159; Hardinge vs. Stokes, 1 M. & W., 233.) Brower reports to Washburn, or some one for him, that the "arrangement" could not be entered into.

There is no denial of this testimony and no attempt to impeach Berens or Brower.

If Washburn had not been ready to use money to corrupt the voters of his district he would have resented the proposition made to him by Berens as an insult; on the contrary, he appears to have been as ready to buy Berens's vote as Berens was to sell it. That Brower was Washburn's agent clearly appears; and when Brower told Berens that he should work for Washburn and he (Brower) would "see him all right," it was in effect the same as if Washburn himself had spoken those words. In short, as Keith and Brower simply acted as agents for Washburn, the transaction may be thus briefly stated:

1. Berens tells Washburn he will sell him his vote for \$50.
2. Washburn thanks him and tells him to go ahead and it will be all right.

There is in the third Congressional district of Minnesota an unorganized county named Kittson, situated in the northwestern corner of the State, and adjoining the line of the British possessions; it is more than 400

miles from Minneapolis. In the fall of 1878 this county was a wilderness; there were probably, as appears from the testimony, not ten actual settlers in the entire county (see pages 125-144). Between the 8th and the 16th October, 1878 (page 125), two men, named Arthur J. White and E. P. Webster, entered into a contract with the Saint Paul and Pacific Railroad Company, which was then constructing a railroad through said county, to get out cord-wood for the use of the railroad company. Between the dates named they collected together some 80 or 90 wood-choppers in the city of Minneapolis, and proceeded to Kittson County to cut this cord-wood. The men so hired were principally harvest-hands and tramps who had not been in the State long enough to vote; they were in Kittson County for a temporary purpose, and were therefore not entitled to vote under the laws of Minnesota (see Rev. Stat. Minn., sec. 55, page 66); the county was unorganized, and the election precincts were established in the county ten days before the election, by the governor, without authority of law, and were therefore legally not election precincts; there were no registration lists at the polling-places; the voting took place in railroad depots or in railroad cars; there were no proper ballot-boxes (cigar boxes and candle boxes without locks and keys, as required by law, being used as ballot-boxes); the judges were not sworn, and, in short, almost all the requirements of the laws of the State for the holding of elections were ignored.

At one of these precincts, to wit, Tamarack River, these 80 or 90 wood-choppers, hired by Webster and White, voted. There were only 4 actual settlers (page 125) in the precinct, and these alone were presumably entitled to vote. The vote cast was 109 for Washburn and 1 for Donnelly. The testimony of George C. Morton (page 125), John Mulvey (page 120), Arthur J. White (page 305), and E. P. Webster (page 297) shows that these 80 or 90 wood-choppers were urged and requested by Webster and White, the wood-contractors, to vote for Washburn; they were told that if they voted for Washburn they would be paid (page 125) from \$1.65 to \$2.20 each for their votes; they did vote, and they voted for Washburn, and they were so paid; *and they refused to vote at all unless they were paid* (page 297). The total sum paid by Webster and White to these men for their votes was \$160 or \$170 (page 307). It further appears, by the admission of Webster, that the contractors expected to be repaid this money (page 297) so paid out for these votes.

It also appears (see page 121) that in addition to the 80 or 90 wood-choppers so bribed to vote for Washburn, the contractors Webster and White gave two trappers their board for a week on condition that they would vote for Washburn; and they did so vote.

George C. Morton testifies (page 126) that White told him in the presence of Webster that they, Webster and White, were to get \$200 for their services at the election in behalf of Washburn. The money paid out by them for votes was repaid to White, one of the firm (see page 127), by Major Hale, of Minneapolis, the business manager of the contestee, Washburn, eight days after the election, by a check for \$182; and the check was cashed for White by one George B. Webster, the paymaster of the Minneapolis and Saint Louis Railroad Company, of which the contestee, Washburn was and is president. White admits (page 307) that he was repaid the sum of \$168 or \$172, being the money so paid for these 80 or 90 votes, by said George B. Webster, paymaster of contestee's railroad company. There was no connection between the Saint Paul and Pacific Railroad, for which the wood was cut, and the Minneapolis and Saint Louis Railroad, of which contestee is president; the one runs from Saint Paul northwestwardly to British America or Mani-

toba; the other runs from Minneapolis southwardly towards Saint Louis; and the place where the wood was cut was between 400 and 500 miles distant from Minneapolis.

Here, then, is a case of bribery by the wholesale, and it clearly appears that the money that was paid for the bribed votes was repaid in *Washburn's office by his business manager*, by a check which is cashed by the paymaster of his railroad company.

Emil Shagren, a Swede, a Greenbacker, a laboring man, resided at the date of the election in question at Minneapolis, Minn. (page 15). He was an active supporter of the contestant, Donnelly, and had been a delegate to the Greenback Congressional convention. About the 15th October, 1878, a friend of Washburn, named William Chase, urged him to go to Washburn's office to see Major Hale, his business manager (the same person who paid for the 80 or 90 bribed votes at Tamarack River), because Major Hale would "convince" him that he should vote for Washburn. Shagren declined to go. The invitation was several times repeated. At length Shagren went to Washburn's office. He was met by Major Hale, who was evidently prepared by Chase for the interview. Hale commenced by asking him if he wanted greenbacks. He, Hale, then referred to the fact that Shagren had been a delegate to the Greenback convention and was a supporter of contestant, Donnelly. Hale told him that he would see that he, Shagren, voted for Washburn. This ended the first interview with Hale. Soon after Shagren got out of work. Chase again urged him to go to see Hale, and he, Hale, would give him "a job"; and he gave him a sealed letter to Hale. On the 19th October Shagren went to *Washburn's office* again. He gave the letter to Hale; Hale read it and went into another room and conferred in whispers, which the witness overheard, with C. C. Washburn, *brother of the sitting member* and ex-governor of Wisconsin. Hale then came out of this room with a \$5 bank-note folded between his fingers; sat down beside Shagren, put his hand on his lap, and said: "Emil, I will tell you what I want of you; I want you to vote for W. D. Washburn (the sitting member), and use your influence and work among your friends for the election of Governor Washburn (the sitting member), and I will pay you \$2 a day from now to the close of the election;" and "he figured it up and said it would be \$36, besides my expenses and money to spend among the boys." "He told me to bring my bill there to Mr. Washburn's office the day after the election and I would get my pay." Shagren made no answer. Then Hale took the \$5 bank-note, which he had brought out of the room where he conferred with the brother of the sitting member, and delivered it to Shagren, saying: "Emil, here is \$5; go and use this among the boys, and drop in occasionally and I will give you more."

It is true that Shagren voted, worked, and made speeches for Donnelly subsequent to this interview; and in one of these speeches and before the election he stated, publicly, the particulars of this attempt to corrupt him and secure his vote; but the crime of bribery was complete when Washburn, in his own office, through his business manager, and in the presence of his brother, paid Shagren \$5 and promised him \$36 more, and Shagren accepted the \$5. It is of no moment whether Shagren intended to vote for Washburn or not, or whether he did or did not so vote. An attempt was made to impeach Shagren by showing that he was contradicted by John C. Oleson and Ole H. Mahler; but Oleson (page 92), while he denies that he told Shagren that he was paid \$2 by William Chase for his vote, admits that he was paid \$2 by William Chase for services at the election; and Mahler (page 117), while he de-

ries that he told Shagren that he had received \$25 from Washburn, admits that he received \$15 or \$25 from somebody, he declines to say whom, and he declines to say whether or not he peddled tickets with Washburn's name on them. So that these witnesses confirm instead of impeach the substantial truth of Shagren's testimony. How could he have known the facts stated unless these parties told him?

The proof in this case seems to your committee to be very conclusive; the party bribed was an active opponent of Washburn and warm supporter of Donnelly, and these facts were known to Washburn's business manager. He belonged to a different political party from the sitting member. The bribery takes place in *Washburn's office and in the presence of his brother*. The witness, Shagren, was coaxed there under the promise of a job, and advantage taken of the fact that he was out of work and poor. A distinct and deliberate proposition is made to him to pay him a given sum for his vote and support, and part of the money is paid to him.

Bernard Cloutier (see page 211) resided in Minneapolis at the time of the election, and sold farm machinery. He was, and had always been, a Democrat, and generally took an active part in politics. About a week or ten days before the election he met John Baxter, a friend of the sitting member. Cloutier told him, in answer to a question by Baxter, that he, Cloutier, did not intend to take any part in the election. He says, "I told him that I had made up my mind to take no part in the election, *as I had heretofore been promised a good deal and never got anything for it.*" Thereupon Baxter requested witness to see Charles W. Johnson (secretary of the Republican central committee of the third Congressional district). Two or three days thereafter Baxter met Cloutier again, and asked him if he had seen Johnson. Cloutier said no. Baxter said that was queer, as Johnson had promised he would see Cloutier. Baxter then took Cloutier to *the office of the sitting member, Washburn*, and they told him there that Johnson had just gone out. An hour afterwards Cloutier was in Christian & Dean's office, when a gentleman came in and told him that "*General Washburn [the sitting member] wanted to see me [Cloutier] at his [Washburn's] office.*" Cloutier went to Washburn's office, and there met Charles W. Johnson and Dr. Keith, (the postmaster at Minneapolis, and the same party who thanked Charles Berens for his offer to sell his support to Washburn for \$50). Johnson wanted Cloutier to go out and electioneer for Washburn. Cloutier said he would do so if he was paid for his time and expenses. Thereupon Johnson told him to start out. The next day Johnson met Cloutier at the post-office, and paid him \$30. The following Wednesday Cloutier met Johnson again at *Washburn's office*. "I told him I wanted some more money. He asked me how much I wanted, and I told him I wanted \$20. *He [Mr. Johnson] went into the next room and commenced talking with Mr. Washburn, the sitting member. He came back and handed me \$20.*"

The witness, Cloutier, states in his cross-examination that he was in favor of Mr. Washburn in the first place; but it appears by his examination-in-chief that he had made up his mind to take no part in the election, *because* he had been previously promised bribes which were not paid; and thereupon he was paid \$50 to convert him from that position of neutrality and indifference into a warm supporter of the sitting member. In other words, the payment of that sum of money secured to Mr. Washburn a support and influence which he would not have had without it. It is fair to presume that if the vote and support of this mer-

cenary politician could have been had without the payment of money the \$50 would not have been paid.

The contract of bribery was made by the secretary of Washburn's committee in Washburn's office, and part of the money was paid in Washburn's office in his presence, and under circumstances which create a strong presumption that it came from Washburn's pocket. That is to say, Cloutier asks Johnson for \$20; Johnson goes to Washburn, and returns with the money and pays it to Cloutier.

Here, then, we have four cases of bribery, involving 96 bribed votes, brought home to the sitting member in the clearest and most conclusive manner. In the first case the negotiation is with Mr. Washburn himself; in the next, the money which bought the votes is repaid in his (Washburn's) office by his business manager; in the third, the bribe is offered and the money paid in Washburn's office by his business manager and in the presence of his brother; and in the fourth case the bribe is offered and the money paid by the secretary of Washburn's committee in Washburn's office, and part of the money paid in Washburn's presence, and probably out of his pocket. It seems to your committee that this evidence is sufficient to convict Mr. Washburn of bribery in any court in the world.

And yet in the face of such an array of testimony Mr. Washburn is dumb. He had forty days in which to rebut this testimony; he could have taken the stand himself, to explain or deny the Berens matter; he could have procured the testimony of his business manager, Hale, to contradict Shagren and Morton; he could have called Johnson to contradict Cloutier; he could have sworn his brother, ex-Governor C. C. Washburn, to deny that he was present and conferred with Hale, and also to rebut the natural presumption that he (C. C. Washburn) furnished the \$5 with which Hale bribed Shagren. He did nothing of this kind; he denied nothing; he called not a single witness to rebut this or anything else in the mass of testimony showing bribery. Certainly no lawyer, and no layman familiar with human nature, will pretend that it was Mr. Donnelly's duty to place these parties who held such close and intimate relations with Mr. Washburn on the witness stand. He might just as well be asked to make Mr. Washburn his witness. In these matters he and his friends were like the Siamese twins, living, breathing, and moving together. Every part of this testimony was brought home to the knowledge of Mr. Washburn, as he was represented by counsel at the hearing of each witness. It will not do for Mr. Washburn to say that he did not wish to "dignify the case of the contestant" by calling witnesses in rebuttal. His own character as a man of honor demanded some denial or explanation of this testimony, which traces the bribery of 96 voters right to his own office, to his business manager, to his brother, and to himself. If he did not consider his own reputation affected by such charges, he at least owed it to his constituents, and to the Congress of the United States, to prove that he had not gained a seat in the House by unworthy, dishonorable, and criminal practices.

Having failed to rebut this evidence by counter testimony, the presumption of law becomes conclusive that he did not do so because he could not do so. He concedes thereby the truth of every statement made by contestant's witnesses, and his silence is an admission of his guilt. It is a well understood principle of law that admissions of guilt "may be implied from acquiescence of the party, whether it be acquiescence in the conduct or language of another." (*Greenleaf on Evidence*, vol. 1, sec. 27 and sec. 197.) "If a material averment, well pleaded, is

passed over by the adverse party, without denial, whether it be by confession, or by pleading some other matter, or by demurring in law, it is thereby conclusively admitted." (*Ibid*, sec. 27.) And in this case the failure to rebut or impeach the testimony of these witnesses as to bribery, is a confession of the truth of their statements and of the guilt of the party.

Your committee have dwelt at length upon these four cases, because they reach home directly to the sitting member; but they constitute but a small part of the testimony showing bribery.

At Crookston, in Polk County, the testimony shows (page 223) that but 85 legal votes were cast, while 258 votes were returned as cast. A large part of these illegal votes were cast by parties at work upon the construction of a railroad; they were not inhabitants of the township; they had no right to vote there. It is proved that 35 or 40 of these were paid for their votes by the railroad company; their tickets were furnished them by the agents of the company; they were Washburn tickets, and they all voted for Washburn. The men so paid to vote for Washburn were Democrats. They were at work shoveling dirt around the round-house. Besides these, two hand-cars, loaded with railroad men, also voted—about 16 of them.

William Johnson (see page 190) was one of a gang of 17 railroad laborers; they were at work 14 miles away from Crookston, and outside the election precinct; they had no right to vote at Crookston, but 16 of them did so vote, and they were paid for their votes by the railroad company; the agents of the company furnished them with their tickets—Washburn tickets; and they voted for Washburn; they would not have voted at all if they had not been so paid (page 191).

D. M. Robbins (page 34), of Saint Paul, had a railroad contract to help build the railroad through Kittson County; had 150 men working for him 15 miles from Two Rivers, Kittson County; about 100 of these men went with him on a construction train to Two Rivers to vote; these men, except about 30 or 40, did vote; they were all paid for their votes the same amount they would have earned if they had continued to work; the railroad company ran the train for their accommodation; *the voting-place was a railroad car*, which stood on a side track; there was no house at Two Rivers station of any kind. As the vote at Two Rivers was 74 for Washburn and 1 for Donnelly, the bribed voters must have voted for Washburn. It further appears (page 36) that the railroad laborers working for this witness at Tamarack River voted there. These made up the balance of the 109 votes polled at that place.

Dennis Reardon testifies (page 144) that he was one of a gang of more than 50 railroad hands that voted between Middle River and Tamarack River; at Two Rivers the voting-place was a box-car, the ballot-box was a candle-box; there were no tickets there but Washburn tickets. These 50 railroad men lived in box-cars and were moved forward as the work progressed. They were all paid for voting by the railroad company; many of them were Democrats. There were no houses in sight at that place, and of course no residents of that locality.

This testimony establishes the fact that at Crookston, Tamarack River, and Two Rivers, there were 161 votes cast by railroad workmen who were not residents of those localities, were there for a temporary purpose, and were not entitled to vote; and that they were all paid for their votes; that they voted for Washburn and would not have voted if they had not been paid.

We have seen that J. V. Brower (page 244), one of the United States land officers at Saint Cloud, Minn., was furnished with the letter of

Charles Berens to Washburn, in which Berens offered to sell his vote to Washburn for \$50. It further appears that Brower received from Washburn, or his committee, money to visit Berens and to make a canvass of certain counties; how much does not appear, as Brower's memory is very oblivious of these details. Brower admits (page 245) that he left money at different places in Todd and Morrison Counties during his canvass for "legitimate political purposes"; that he did this in the interest of Mr. Washburn; and he, Washburn, knew he was working for him (page 252); he visited five towns in Morrison County. He considers it perfectly legitimate to hire Democrats to work with their teams in behalf of the Republican party. He hired a number of men in this way; he cannot remember how many; it may have been twenty or one hundred; neither can he recollect whether he spent \$50 or \$500 in this canvass of Morrison and Todd Counties.

This testimony shows that an agent of the sitting member, acting at his request, with his knowledge and by his authority, and furnished with his money, or the money of his party, went out into the counties of Todd and Morrison, 120 and 150 miles from Minneapolis, upon a mission of corruption; that he bought up probably 100 voters and spent probably \$500 in the work; and although the events transpired but a few weeks before his testimony was taken, he pretends that he does not remember the names of the voters he bought, the amount he paid out, or the number of persons bribed. The bribery was accomplished under the thin disguise of employing Democrats to work at the polls for the sitting member. He admits that one of the parties so bought was George Geissel, of North Prairie; he paid him a sum of money—may have been \$5 or \$20—for the use of a team (page 246). He paid Thomas Kitowski a sum of money, probably \$25 or \$30, to peddle tickets for Washburn at the polls, and for cigars to be furnished the voters (pages 245, 253). Kitowski was a Democrat.

Having established the close relations of Brower with the sitting member, and his authorized agency for him, let us follow him in his canvass:

John Fleckenstein (page 291), of Rich Prairie, Morrison County, a farmer: his "politics aint much"; Brower called to see him; he told Brower he had decided to take no part in the election. He subsequently received, he thinks from Brower, \$10 with a lot of Democratic tickets with the sitting member's name on them. He kept part of the money; he bought crackers and beer with part and paid \$5 to Peter Virnig. The witness pretends that he voted for Donnelly, but the tone of his testimony renders this doubtful.

Brower then went to see Peter Virnig (page 299), another farmer of Rich Prairie, a Democrat. John Fleckenstein was with him. Fleckenstein paid him, Virnig, \$5, "for his team and his day's work" at the election. With the \$5 was a lot of Democratic tickets with Washburn's name on them. Virnig also pretends that he voted the straight Democratic ticket.

Brower also called to see Henry Armstrong (page 303), of Two Rivers, Morrison County, a farmer and a Democrat. He testifies that Brower paid him \$20 to work at the polls for Washburn. He did work for Washburn, distributed his tickets, and the presumption of law is that he voted for him.

Thomas Kitowski was subpoenaed to testify, but refused to appear. Charles Berens testifies, however (page 300), that Kitowski told him that Brower had paid him \$50. Brower admitted he had paid him some money, it may have been \$25 or \$30.

These briberies having been committed by an authorized agent of

the sitting member, were, in effect, committed by the sitting member himself; and the agent, Brower, says that he will not swear that he did not bribe 100 persons in the same way during his canvass of Todd and Morrison Counties, and spend \$500 in doing so.

Milo Porter (page 292), mail-carrier, of Little Falls, Todd County, was a supporter of Donnelly. The Republican county treasurer of Todd County, Mr. Buss, offered him \$50 if he would abandon Donnelly and support Washburn. He (Buss) said he had himself received, or was to receive, \$500. Porter declined to take the \$50, and published a card at once, before the election, in the Little Falls Transcript, reciting the offer made him, and warning the people of the kind of means that were being employed to elect Washburn. There was no attempt made to contradict Porter's testimony. Buss was not called to the witness-stand.

We pass from the northern part of the district to the southern part.

William M. Leyde (page 48), lives at Cottage Grove Washington County, engaged in thrashing-machine business—a Republican. He saw Mr. Washburn in Saint Paul shortly before the election. He went to Minneapolis, to the room of the Republican Central Committee, or a room adjoining. He was there furnished with a letter (he does not remember whose name was to the letter) to a Mr. Sabin, of Stillwater, requesting Sabin to employ him to canvass the county (page 49). He (Leyde) understood that \$600 was raised in Stillwater for political purposes. Armed with this letter, he went to Stillwater, and was paid \$50 by Sabin and \$15 by another party to canvass the county, and thereupon he visited nearly all the towns in the county and hired men to work at the polls for Washburn with their teams. He declines to say who he hired, how many he hired, or how much he paid them.

We supplement Leyde's testimony by the testimony of F. S. Meilicke (page 52), one of the county commissioners of Washington County, to whom Leyde stated that he (Leyde) had talked with Washburn, and Washburn told him "to go to Sabin, and that the money had been placed in Sabin's hands and he would make it all right with him"; and that they had raised \$600 in Stillwater, "besides the amount *that Mr. Washburn had placed there.*" He (Leyde) said that he had spent all the money so furnished him but \$15 in hiring men to work at the polls for Washburn; he gave the name of one man, Henry Monroe, of Newport, to whom he had paid \$5 "to work at the polls for Washburn." All the \$600 raised at Stillwater, and the money contributed by Washburn, was to be spent in behalf of Washburn.

We turn now to some briberies committed in Saint Paul; and here, again, the money paid is traced back to Minneapolis, and to the sitting member.

John Flaherty (page 25) testifies: Is a saloon keeper in Saint Paul; a Democrat. He went to Minneapolis two weeks before the election; went to the Republican headquarters; saw C. W. Johnson, secretary of the Republican Central Congressional Committee, and the same party who acted as agent for Washburn in the bribing of Cloutier. Johnson said that Washburn must be elected, and asked witness if he thought he could get many votes in Saint Paul, and witness said he thought he could. Johnson told him that one R. Barden "was their agent at Saint Paul," and promised to write Barden about Flaherty. The day before election witness called on Barden and Barden paid him \$10. Witness pretends that he voted for Donnelly, but admits that he worked at the polls part of the time for Washburn.

Abraham Werrick (page 28), of Saint Paul, machinist, testifies that

he also went to Minneapolis in October, before the election. He made it his special business to see Washburn, and saw and conversed with him; he asked Washburn "who was his friend down there"(in Saint Paul). Washburn told him "he expected the committees would take some interest in him"; "that Mr. Barden" (the same party mentioned by Flaherty) "was on some committee," and he gave him a letter of introduction to Mr. Barden; the letter stated that Werrick was his (Washburn's) friend. Witness presented Washburn's letter to Barden; forgets what conversation took place; but the committee (presumably the committee of which Barden was a member) asked him to hire two men to work at the polls. He received \$30—\$10 for himself and \$20 to hire two men. He hired Oluf Larson and Julius Bjornstad, and paid them \$10 each. He worked for the whole Republican ticket. Prior to seeing Washburn and being paid this \$30, he had not been supporting Washburn (page 31); the men Larson and Bjornstad were paid to work for the whole Republican ticket. Larson (page 27) is called and admits the receipt of \$10 from Werrick, to work for the straight Republican ticket; he did so work and voted for Washburn. Bjornstad (page 21) testifies to same effect; he worked for the whole Republican ticket; received \$10 from Werrick; he claims to have voted for Donnelly.

O. B. Wergedahl (page 20), of Saint Paul, testifies that Werrick told him he wanted him to work for the Republican ticket; and said that he (Werrick) saw Washburn twice in Minneapolis, and that Washburn him (Werrick) to Barden, and told him that he (Washburn) "*had given money to Barden to spend in Saint Paul for his election.*" He wanted Wergedahl to work for Washburn, and told him he had got money for Bjornstad; witness refused to work and vote for Washburn.

This testimony seems conclusive. Washburn had placed corruption funds in the hands of R. Barden, and he and Johnson, secretary of his committee, refer parties to Barden for money; and Barden, or some member of the committee, pays out money to these parties; they pay in turn to others, and all of them work at the polls for Washburn's election.

Another Saint Paul party, John Guiry (page 22), admits the receipt of \$25 from a Republican candidate for a local office (State senate) to work at the polls and peddle Republican tickets. He pretends to have voted for Donnelly.

Christian Heyer, a Democratic German farmer, of Afton, Washington County, testifies (page 54, printed testimony) that he was paid \$10 by Warren Getchel, a Republican politician, and particular friend of the sitting member. Getchel asked him if he could support Washburn. Witness said he would. Getchel said he was "a particular friend of Washburn," and "he wanted me to help all I could; he asked me if there were any debts on our German church, and that after election he would hand me \$10 to use for what purpose we thought best—I could do with it as I had a mind." He does not know what the consideration was for the \$10. They have a large German population at Afton, about half Democrats. He worked and voted for Washburn.

Tolef G. Fladeland, of Sauk Center, Stearns County, merchant, testifies (page 221, printed testimony) that he was paid \$20 by Mr. Cooper, chairman of the Republican county committee of Stearns County, to go out and peddle Democratic and Republican tickets with Washburn's name on them. He told Cooper that he was not a politician; doesn't know but he expressed himself in favor of Mr. Donnelly during the campaign. At the time Cooper paid him the \$20 he was neutral as between Donnelly and Washburn. He visited two or three towns; used his own team; was gone one day; expenses \$1; profits, \$19.

The testimony of Nathan Richardson, of Little Falls, Morrison County (page 285), leading Republican and politician by trade, shows that the editor of the Democratic paper at that place was bought up to support Washburn; that the sum paid was probably \$125 (page 286); that it came from Minneapolis, from Loren Fletcher, an active friend of the sitting member and a prominent Republican (page 44); and that after the payment of that sum the said newspaper supported Washburn and denounced Donnelly. The witness Richardson, who conducted the sale of this Democrat and his newspaper, supported Washburn, made a canvass of the county in his behalf, spent \$25. He admits the payment of \$7 to William Witherall; he did not expect to be repaid; thinks Witherall voted for Washburn; he also paid \$2 or \$3 to a man named Sloan; money has not been repaid; thinks Sloan voted for Washburn.

It will be observed that in nearly every one of these cases of bribery committed throughout a region of country half as large as the State of New York, the money paid is traced back to the city of Minneapolis, the residence of the sitting member. From this point as a common center, the corruption radiated in all directions over the district; and when we come to Minneapolis all the testimony shows that it was a very hotbed of bribery. We give brief abstracts of the cases proven:

It is shown (page 80) that a Democrat named A. M. Schaak, a Scandinavian, was publishing a Scandinavian newspaper in Minneapolis during the campaign and supported Donnelly for Congress up to the night before the election; that night he was announced to speak at a Scandinavian Democratic meeting at Minneapolis in favor of contestant, Donnelly. Instead of speaking for Donnelly, he came out strongly for Washburn, and the next day he admitted to witness that he had been paid \$150 for doing so. He had a new suit of clothes and a pocket full of money. There was no attempt to contradict this witness; in fact, counsel for the contestee, in their cross-examination, seem to urge that it was perfectly right and legal to bribe Democrats to speak in favor of Republican candidates. It may be said that this testimony as to Schaak is hearsay evidence. The declaration of a voter as to his qualification or disqualification to vote is always received in evidence; he is regarded as a party to the proceedings. This is a well-settled and uniform practice (see 27 N. Y. Rep., *People vs. Pease*; 3 McCord's Rep., page 230, foot-note; contested-election case, *Vallandigham and Campbell*, Cong. Globe, vol. 41, page 2317; and in the case of *Milborne Port*, 1 Douglas Election Cases, 67, 76, 129, 150, &c., (see 3 McCord, 230), it was decided that the admissions of a voter that he was bribed are always receivable in evidence. They rest also on the broader ground that confessions of crime are receivable against the party "as the highest and most satisfactory proof." (Russell on Crimes, volume 2, page 823). Here the admissions are confirmed by all the surrounding circumstances; the sudden conversion on the eve of the election, the new clothes, money, &c.

William R. Metcalf (page 182), a farmer residing in Crystal Lake Township, near Minneapolis, testifies that he was paid \$15 to work at the polls in Crystal Lake Township for the Republican ticket. Corser, one of the parties who hired him to work at the polls, was a Republican candidate for State senator, asked him to support Washburn; he refused; subsequently he was engaged to work at the polls for the Republicans. The \$15 was paid him by Charles W. Johnson, secretary of Washburn's committee, the same party who bribed Shagren, Flaherty, &c. He went to Johnson's office two days after the election; he simply

presented his name and Johnson paid him the \$15 without a word. He declines to say who he voted for for Congress; will not swear that he did not vote for Washburn.

It will be remembered that when Major Hale attempted to bribe Shagren he told Shagren to come the day after election to Washburn's office and he would be paid. We find, from Metcalf's testimony, that Johnson also had an arrangement to pay off his bribed voters the day after election; and in this connection we would refer to the testimony of Ed. A. Stevens (page 105), whose office was in the same building with Johnson's office, who swears that as he passed Johnson's office several men were standing in front of it, and a party said to Stevens, "You ought to hear Charley Johnson swear; there is a big crowd below after their pay, and Charley says 'Major Hale can pay his own hounds. I have all I can do to pay those I hired myself.'" The testimony of Metcalf and Shagren shows what they were being paid for.

This same man Johnson issued, September 19, 1878, as secretary of the Republican Congressional committee, an appeal (see page 43) in the form of a circular, to Republicans to contribute funds to the success of the Republican cause in the district. The circular is in these words:

MINNEAPOLIS, September 19.

SIR: The Congressional committee, charged with laboring for the success of the Republican cause in this district, call with confidence upon you, as a Republican, for such a contribution in money as you may feel willing to make, hoping it will not be less than \$——.

The committee deem it proper in thus speaking to Republicans to remind them of the importance of the impending campaign. That the United States Senate is to be Democratic after the 4th of March, 1879, is very nearly certain. In view of this, the election of a Democratic House of Representatives would precipitate upon the country dangerous burdens. Among these schemes is the intention to attempt the revolutionary expulsion of the President from his office, the payment of the rebel claims and war debt, the payment of the full value of all emancipated slaves, and the unlimited issue of irredeemable paper currency in place of the present redeemable paper money, which was issued by authority of a Republican Congress, and by the same party has been sustained, thereby preserving the national honor and credit.

Please remit at once, &c.

Johnson admits (page 42) that copies of this circular were sent out to about fifty persons, and that money was received in reply, but he refuses to state who it was sent to, and he does not remember what amount was received in response to this appeal.

This circular proves three things:

1st. That the Republican committee was collecting money for political purposes. And while there is no testimony to show that the particular money received in response to this circular was used for corrupt purposes, there is evidence which abundantly establishes the fact that money, derived from some source, was employed in buying voters.

2d. That Mr. Washburn's committee regarded and treated Mr. Donnelly as a Democratic candidate, and entitled as such to the Democratic vote of the district.

3d. That they were willing not only to admit Mr. Donnelly's democracy, but to charge him with being so extreme a Democrat that he would join in the most revolutionary designs of his party; and they make the appeal to the lowest passions and prejudices of human nature, by charging upon the Democratic party of the nation preposterous designs which it had never contemplated or advocated.

Louis Kundson, of Minneapolis, testifies (page 161, printed testimony) that he was paid \$5 by his employers, Barnard & Cope, active Republicans, to work for Washburn. He worked and voted for him. H

fellow-workman Louis Paulson did the same kind of work, and also received \$5; he, Paulson, saw it paid.

John C. Oleson testifies (page 92) that Wm. Chase asked him to vote for Washburn. He paid him \$2 to work at the polls for Washburn, and he did so work and vote. This Wm. Chase was the same party who induced Shagren to go to Washburn's office in search of "a job."

Emil Shagren testifies (page 16) that Ole Mahla admitted to him that he got \$25 to vote for Washburn. Mahla denies this in part (page 117), but admits that he did receive \$25 from some one for working at the polls. He declines to say whether he peddled tickets with Washburn's name on them. He refuses to say who paid him the money. He pretends that he voted for Donnelly.

Shagren also testifies (page 16) that Sevit Mahla told him that he had been paid to vote for Washburn, but did not state the amount. Also that Daniel Getchell told him that he had received \$20 for voting for Washburn. Getchell denies this (page 86), but he refuses to say what he did say to Shagren. He admits that he received money for his services at the election, but claims that it was not from Mr. Washburn, and that he voted for Donnelly. He refuses to tell who paid him.

Dominick M. Guertin (page 94) testifies that Karl Fintler told him that he had received a sack of Washburn flour for voting for Washburn.

Louis N. Gaynor, of Minneapolis (page 206), admits that he received money for his services on election day, but declines to say who paid it to him; and he declines to answer whether he voted for Mr. Washburn or worked for him; but he admits he peddled tickets with his name on them.

Peter Engberg, of Minneapolis (page 207), admits that he received money for election purposes; that he voted for Washburn; that he worked for him, and that he was paid for his services on election day.

John Smith, of Minneapolis (page 131), swears that Peter Quady, a saloon-keeper, told him he had received \$35 for voting his boarders for Mr. Washburn.

Peter Quady (page 201) admits that he told Smith that he received \$5 and was to receive \$20 more; that he induced Smith to vote and gave him a Washburn ticket; several of his boarders voted for Washburn; but he pretends the money was not paid in the interest of Washburn; he voted for Washburn.

Winfield S. Leach (page 158) testifies that Quady offered him \$10 if he would vote for Washburn. Leach refused the offer.

Hon. Charles Hoag, a leading Democrat of Hennepin County (see page 90), was requested by a Democratic worker for Washburn to state what sum of money, put into his hands, would induce him to vote for Washburn. Hoag refused the bribe and voted for Donnelly.

Thomas G. Rees, of Minneapolis (page 146), testifies that Frederick Puhler told him that he was hired to canvass, "travel, and treat" for Washburn, and was paid \$35 per week and \$10 a day for money spent in treating; and that there was a man similarly employed in each of the fifteen precincts of the city of Minneapolis.

Thomas Halloran, hotel-keeper, Minneapolis, testifies (page 119) that he is a Democrat; that he was paid \$5 by a Dr. Evans, with which "to treat the boys," and he agreed to work and vote for a Republican candidate named by Dr. Evans; it was not Mr. Washburn; and he claims that he, Halloran, voted for Donnelly.

The following is a summary of the cases of bribery or attempted bribery referred to in the foregoing testimony:

Cases where the money was paid by the sitting member, or his business manager or the clerk of his Congressional committee, or some friend, and the parties voted for sitting member.

At the wood-camp at Tamarack River, 90 wood-choppers and 2 trappers, total...	92
Webster and White, the contractors.....	2
Bernard Cloutier.....	1
Railroad hands at work at round-house, Crookston, Polk County.....	35
Railroad hands who came to Crookston on hand-cars.....	16
Railroad hands who voted at Crookston with Johnson.....	17
Railroad hands who voted at Two Rivers.....	74
Balance of D. M. Robbins's railroad hands who vote at Tamarack River.....	15
J. V. Brower and the men he bribed, to wit, George Geissel, Thomas Kittowski, and Henry Armstrong.....	4
Wm. M. Leyde.....	1
Henry Monroe.....	1
Abraham Werrick.....	1
Oluf Larson.....	1
Christian Heyer.....	1
Toleff G. Fladeland.....	1
William Witherall.....	1
— Sloan.....	1
A. M. Schaack.....	1
Wm. R. Metcalf.....	1
Louis Kundson.....	1
Louis Paulson.....	1
John C. Oleson.....	1
Ole Mahler.....	1
Sevit Mahler.....	1
Karl Fintler.....	1
Louis N. Gaynor.....	1
Peter Engberg.....	1
Peter Quady.....	1
Fred. Puhler and the 14 canvassers similarly engaged in the other 14 precincts of Minneapolis.....	15
Mr. Buss, treasurer of Todd County.....	1

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Cases where bribes were offered but not accepted, or where, if accepted, the party bribed claims that he voted for Donnelly.

Emil Shagren.....	1
John Fleckenstein.....	1
Peter Virnig.....	1
Charles Berens.....	1
Milo Porter.....	1
John Flaherty.....	1
O. B. Wergedahl.....	1
John Guiry.....	1
Julius Bjornstad.....	1
Daniel Getchell.....	1
Winfield S. Leach.....	1
Charles Hoag.....	1
Thomas Halloran.....	1
Total.....	30

13

30

But this is not all. The testimony reveals the names of only six of the parties who were bribed by J. V. Brower, of Saint Cloud, in his canvass of Todd and Morrison Counties, and to these six men he paid out only \$100, but he testifies that he may have similarly employed a hundred parties, and he does not know whether he paid out \$50 or \$500. In the case of William M. Leyde, another of the agents sent out by Washburn, we have the name of only one of the men he hired to work at the polls, Henry Monroe, while it is in evidence that he canvassed nearly every town in the county and hired a number of men whose

ames he refused to disclose. We find that at Crookston there were 73 illegal votes, and the testimony shows that 68 of these were railroad hands who were all paid for their votes. The probability is very great that the larger part of the other 105 votes were cast by railroad hands similarly paid for their votes.

In Minneapolis the whole atmosphere was clouded with bribery. The evidence shows that large sums of money, many thousands of dollars, had been spent for corrupt purposes. A startling revolution in the political feelings of the voters was accomplished on the eve of the election, and all the testimony indicates that this was brought about by bribery and intimidation. There was no attempt on the part of the sitting member to account for this extraordinary revolution, or to answer the testimony showing bribery.

It must not be forgotten that bribery is a secret crime; both the parties to it are equally interested in keeping it secret; and when detected both are ready to give ingenious explanations of it. If they have acknowledged to third parties the receipt of the bribe, they are ready to declare, when called to the witness-stand, that they were in favor of the bribe-giver before the money was offered; or that they voted for his opponent; or that the money was paid by some one else, some nameless party, for some other purpose.

Under these circumstances when it is shown that in an election over 100 cases of bribery and attempted bribery are proven, the presumption is not violent that for every case that was, by accident or the indiscretion of the parties, brought to the light there were others that were never revealed.

The records of the contested-election cases of Congress will be searched in vain for a parallel to this case. It shows that the people of this Congressional district were debauched to the last degree; the witnesses in many cases defend the practice of buying up voters to forego their principles; the parties who received the bribes in many instances boasted to their neighbors of the money they had received, and seemed to be proud of the high price for which they had sold themselves; and the sitting member did not think it at all necessary to call witnesses to deny or explain away this overwhelming mass of corruption. Nothing could testify more strongly to the degeneracy of the age and the depths to which popular suffrage has fallen than the revelations made in this extraordinary case.

It is a clearly established principle of law, both in England and the United States, that bribery committed by the sitting member, or "by any agent of the sitting member, with or without the knowledge or direction of his principal, renders the election void." (See *Felton vs. Asthorpe*, Rogers's Law and Practice of Elections, 221.)

In England bribery is an offense of so heinous a character, and so utterly subversive to the freedom of elections, that, when proved to have been committed, though in one instance only, and though a majority of unbribed voters remain, the election will be absolutely void. (Cushing's Par. Law, p. 70, sec. 189; *St. Ives*, Douglass, 11, 389; *Wentry*, Peckwell, 1, 97; *Maine on Elections*, 345.)

Freedom of election is violated by external violence, by which the electors are constrained, or by bribery by which their will is corrupted; and, in all cases, where the electors are prevented in either of these ways from the free exercise of their rights, the election will be void without reference to the number of votes affected thereby. (Cushing's Par. Law, p. 68, sec. 181.)

The same doctrine was affirmed by the House of Representatives in the recent case of *Platt vs. Goode*, second Congressional district, Virginia. (See *Contested Elections, 1871-'76*, page 650).

The report, adopted by the House, declares:

The bribed votes should not be counted. The record furnishes no method for their elimination. Their acceptance can only be avoided by applying the rule of law, so well known and of such general adoption that it need scarcely be repeated here, that when illegal and fraudulent votes have been proven, and the poll cannot be purged with reasonable certainty, the whole vote must be rejected.

But your committee do not think it necessary to rest the decision of this case upon this principle of law, although they believe that the evidence shows conclusively not only that bribery was committed in a multitude of instances, but that a great number of these cases were traced home to the sitting member. They are of the opinion that the evidence shows that the contestant had a majority of the legal votes cast and returned.

INTIMIDATION.

It appears that many of the voters who cast their votes in favor of the sitting member were intimidated and coerced into doing so. The testimony of Albert Church, (pages 224, 227) shows that the railroad hands who voted for Washburn, at Crookston, told him that they were compelled "to vote the way their boss, the railroad company, told them to; * * * they had to vote the ticket of their own boss." They were led up in a body to the polls (page 226) by their foreman, Jacobus, and he gave them the tickets they were to vote. Many of these men were Democrats (page 224), and would probably have voted the Democratic ticket if they had been free from the coercion of the railroad company.

In Minneapolis this system of coercion and intimidation was carried out systematically. The testimony shows that the employers of labor in that city united to raise money to buy votes for Washburn (page 23); a circular was issued by the chairman of the Republican county committee, urging business men to lay aside their business and devote one day at the polls (page 106); large numbers of employers of labor, including many who usually took no part in such work, were at the polls working for Washburn (page 106); the workmen were sent for and brought to the polls by their employers and ballots were there placed in their hands, folded, and voted by the employes without being opened (page 108), the employer or his foreman following them to the polls to see that they deposited them (page 97); many of the employes declared that they believed they would lose their means of subsistence if they did not vote for Washburn (page 110); the employes of the North Star Woolen Mill were brought to the polls in squads by the son of the proprietor, Philip Gibson; when a friend of contestant tried to give the men ballots, Gibson jumped between them and tried to force the canvasser away, declaring that he had brought the men there himself, and that most of the workmen voted as their employers wanted them to (page 96). The foreman of this mill told one of the workmen (page 97) that an employe of the mill had, at a previous election, voted in opposition to his wishes, and that he would take the same man to the polls the next day, to wit, to the Congressional election in question, and if he did not vote as he wanted him to he would discharge him. When witnesses were called by contestant from among the employes of this mill to testify in this case, the said foreman followed them to the notary's office and remained there while they were testifying (page 98).

The workmen in the Minneapolis Harvester Works who were known to be Washburn men were carried to the polls and returned; while those who could not be induced to vote for Washburn were not allowed to go, unless by losing their day's work, and probably their situations. (Page 98.)

In one case a witness, a workman in a furniture shop, swears that he was suspended from work the day after election because he had voted for

Donnelly, and because it was reported to his employer that he had expressed the belief that if Donnelly was elected the workmen would get better wages; ten days after election he was finally discharged. (See pages 101-2). It appears—

The vote of the city was very light. * * * A large number of workmen did not vote at all. They were afraid of losing their jobs if they voted for Donnelly, and they would not vote for Washburn. (Page 113.)

In seven precincts of Minneapolis the judges of election placed a number on the back of each ballot to correspond with the number of the voter on the poll-list. Let us consider the purpose of this numbering of the ballots.

At the session of the legislature of Minnesota in January and February, 1878, a special law had been enacted, providing that in cities containing more than 12,000 inhabitants the ballots should be numbered. This law applied, and was intended to apply, only to the cities of Saint Paul and Minneapolis, where the workmen were very numerous, and where alone the required population existed. It was felt by many that this provision of law was oppressive and unconstitutional, and at the spring election in Saint Paul, held immediately after the law was passed, a party offered to vote without having his ballot numbered; he was refused, and he brought an action at once in the district court of Ramsey County, in which Saint Paul is situated, to test the validity of the act. The court decided (see *Brisbin vs. Cleary et al.*, printed testimony, page 74) that the act was unconstitutional, inasmuch as the constitution of Minnesota, section 6, article VII, provides that "all elections shall be by ballot"; that the ballot implies secrecy, and that this law requires every man "to vote, in effect, a ticket with his name indorsed on it"; and in case of a contest the ballots are to be made public. "This law," says the court, "furnishes the means of ascertaining exactly how every elector voted; that is its acknowledged purpose."

This decision of the district court of Ramsey County was the unanimous decision of a full bench of three judges; it was appealed to the supreme court, and was affirmed by the supreme court subsequently to the election. (See *Northwestern Reporter*, vol. 1, page 75, foot page 825, *Brisbin vs. Cleary et al.*, being an appeal from the district court of Ramsey County, in the same case referred to above.) The supreme court sustain the decision of the district court of Ramsey County, and say:

The statutory provision with regard to the numbering of tickets, above quoted clearly interferes with and violates the voter's constitutional privilege of secrecy. It is therefore an unconstitutional provision. The voter cannot be required to submit to its application the ticket offered by him. * * * The defendant's demurrer was properly overruled, and the order overruling the same is accordingly affirmed.

This decision was made subsequently to the election in controversy, but is it not retroactive in its effect upon this case?

It declares that the word "ballot" means secrecy and absence of every external mark whereby the elector who has cast the same can be identified. A ticket identified by placing the voter's name, or a number indicative of his name upon it, is not a "ballot" in the sense of the constitution; and has, therefore, no right to be placed in the *ballot*-box. When the court decided that such identified tickets were not "ballots" it certainly follows that they are not entitled to be counted as "ballots."

Briefly stated, the argument may be thus summed up:

1. Members of Congress can only be elected in the State of Minnesota by "ballots."
2. A numbered ticket is not a "ballot."
3. Such numbered tickets, therefore, cannot be counted.

They are simply attempts to vote, but are by election officers deprived of that constitutional element of secrecy which is necessary to enable them to be counted as "ballots."

But it is not necessary to rest the decision of this case alone upon this ground. The conclusion we have reached is based on broader foundations, which reach the *bona fides* of the election in the precincts where those ballots were numbered. Not only were the numbered votes cast in those precincts unconstitutional and void, but they were so numbered for a corrupt and dishonest purpose, and were incompatible with an honest, fair, and free election.

All lawyers will concur that the decision of the district court was highly persuasive of, if not sufficient to control, the judgment of election officers in their action touching the validity of the statute in question. And we accordingly find (see *Daily Globe*, November 5, 1878, report of proceedings, offered in evidence) that in the city of Saint Paul the judges of election met the day before election, took counsel with the law officer of the city, and decided not to number the ballots. They took this course under the advice of the attorney-general of the State (as appears by said paper), of the county attorney of Ramsey County, of the city attorney of Saint Paul, and even of the counsel who had defended the law before the district court. These parties, the attorneys for the city and county, and the attorney defending the act, united in a card to the public advising election officers not to number the ballots. (See *Saint Paul Pioneer Press*, October 27, 1879.)

A similar meeting of the judges of election was held the day before the election in the city of Minneapolis (see page 134). They called upon the city attorney for his opinion on the question of numbering the ballots. He told them that the district court of Ramsey County had decided that the law was unconstitutional, and that it was his opinion, also, that such numbering destroyed the secrecy of the ballot and was unconstitutional. "They finally took a vote as to how they would conduct the election in that particular," and "decided in favor of disregarding the law," and that they would not number the ballots. The vote stood thirteen or fifteen against eight or ten (page 143).

It was thus resolved in both the cities to which alone the law applied that the ballots should not be numbered. This was considered a triumph for the supporters of Mr. Donnelly, and accordingly, the *Saint Paul Daily Globe*, the Democratic paper of that city, which was supporting Mr. Donnelly, announced this action in its issue of the next morning, which was the morning of election, in these words:

[From the *Saint Paul Daily Globe*, November 5, 1878, Exhibit B. E. A. H., on file in office of clerk of Committee on Elections.]

MINNEAPOLIS NEWS.

NO NUMBERING.

DEMOCRATS, WORKINGMEN, AND NATIONALS.

**THERE IS NO FEAR OF LOSING YOUR SITUATIONS. GIVE WASHBURN A BLACK EYE.
YOUR EMPLOYERS CANNOT FIND OUT HOW YOU VOTE.**

The judges of election met at the council chamber at 3 o'clock yesterday afternoon to consult as to whether it would be legal, after the recent decision of the Ramsey County Court, to number the ballots. After consulting the best legal talent of the city, it was determined to receive the votes as of old, and deposit without placing the numbers opposite the different names.

This makes the thing all secure! Now, boys, go to the polls and vote as you please! The bulldozers can't rob you of your places.
Vote for Donnelly, and down with all rings.

In Saint Paul the same paper announces the resolution of the judges not to number the ballots under a head-line, "NO NUMBERS—A FREE, UNTRAMMELED BALLOT!"

This, it will be remembered, was contemporaneous history; it shows that it was understood at that time, before any contest could have been contemplated by contestant, that the numbering of the ballots would result in the intimidation of the workingmen who were in favor of Donnelly; and that if the ballots were not numbered Donnelly would secure a larger vote among the workingmen.

This newspaper, it is shown, reached Minneapolis before 7 o'clock in the morning of the election, and it had a large circulation in that city (see page 46, questions 9, 10, 11, 12). It, doubtless, aroused the friends of the sitting member to action; for we find that by 9 o'clock, the hour at which the polls opened, a decision had been reached to number the ballots in seven out of fifteen election precincts of Minneapolis. It is charged by contestant in his brief that these precincts were largely inhabited by workingmen; and this statement was not denied by the counsel for the contestee in his brief. It appears (page 181) that in one precinct (second, of the fourth ward), all the voters were workingmen; and the returns of the votes of previous elections show that a large Democratic vote was cast in these precincts.

If the numbering of the ballots had been the result of an innocent mistake on the part of the judges of these seven precincts; if they had been ignorant of the decision of the district court of Ramsey County declaring such numbering unconstitutional; if there was no evidence to show fraud or intimidation, we should not be in favor of casting out the votes of these precincts simply for the reason that the ballots had been numbered. This was the view taken by the election committee in the case of *McKenzie vs. Braxton*, seventh district Virginia (Contested Elections, 1871-'76, page 20). The committee (McCrary, chairman), says:

Although it would be possible, from the numbering of the ballots, to ascertain how each person voted, it is not claimed in this case that this was done, or that the tickets were voted for any such purpose, or for any improper or unlawful purpose whatever.

The question of *intent*, therefore, is the true question at issue, and all the circumstances in the case under consideration point to a corrupt intent:

1. A cloud of bribery surrounds the vote of the whole city, which the contestee has made no effort to dissipate.

2. There is evidence showing a widespread conspiracy among the employers of labor to corrupt and, where they could not corrupt, to intimidate their workmen.

3. The testimony shows that the workmen were intimidated, and that they believed that they would lose their means of subsistence if they voted against Washburn.

4. The judges of election knew that the numbering of the ballots had been declared unconstitutional by a court of record second only to the supreme court in dignity; by the attorney-general of the State; by the city attorney of Saint Paul; and by the county attorney of Ramsey County; and that even the attorney who had defended the constitutionality of the law in the district court had advised judges of election not to number the ballots.

5. They had been told by their own law officer, whose opinion they had requested, that it would be unconstitutional to number the ballots, inasmuch as it violated the secrecy of the ballot.

6. They knew that the supporters of Mr. Donnelly believed that the

numbering of the ballots would prevent a free and fair election, and would result in the intimidation of the workmen.

7. They had deliberately voted by a large majority *not* to number the ballots.

There can be but one explanation of the *intent* with which they reversed this deliberate action. It was done to prevent a fair election, and to give the employers of workingmen an opportunity to still further intimidate them by preserving a record of how the men voted whose means of life depended upon the good-will of those who employed them; the workingmen well knew that the ballot-boxes could be opened at any time in any real or pretended contest and the character of their votes revealed.

Only bold and reckless men would have dared to set their private judgment, as laymen, against the judgment of the district court of Ramsey County, against the judgment of the attorney-general and of the law offices of their own city, upon a question of law, and against the opinions of two-thirds of the judges of election as expressed at the meeting of judges the day before. In doing so they ran counter to and defied the settled opinion upon the question. These seven precincts were the only precincts in the two cities Saint Paul and Minneapolis—where there were over thirty precincts—in which the ballots were numbered in the year 1878.

It must be remembered that the testimony shows that among the twenty-one judges of election of these seven precincts, who thus reversed the action of all the judges of the city of the day before, there was but one judge who was a friend of Mr. Donnelly (see pages 195-197); and even he did not swear that he was a supporter of Mr. Donnelly, but only that he was "understood" to be such (see page 136). By law Mr. Donnelly, as the candidate of two political parties, should have had fourteen supporters among these twenty-one judges; in effect, he had not one. (See section 1 act of March 12, 1878.) This extraordinary action was therefore taken by twenty-one judges who were the political partisans of Mr. Washburn; and no explanation is offered by Mr. Washburn or themselves for their course.

The very fact that in these seven precincts Mr. Donnelly had been deprived by the city council of Minneapolis of all representation among the officers conducting the election is, in itself, a very strong proof of conspiracy and fraud.

It appears by the testimony of one witness, a Democrat (page 137), that he offered his ballot at one of these precincts and requested that it be placed in the ballot box without being numbered; this was refused; the judges refused to permit him to vote unless he voted a numbered ballot; this he declined to do, and he did not vote. It appears that large numbers of workmen did not vote for fear of losing their places (p. 113). It is an established principle of law that where voters are kept from voting by an illegal requirement of the election officers, it voids the election at such polls. (See McCrary's Amer. Law Elections, section 89; Scranton Borough Election, Brightly's Election Cases, page 455.) It is evident that large numbers of Democrats, from some cause, did not vote at all at said election in that city.

Two years previously, at the Presidential election of 1876, the vote of Minneapolis stood as follows (see Saint Paul Pioneer-Press, November 9, 1876, in Congressional Library):

Hayes	4,199
Tilden	3,743
Total	7,941

It is a matter of history that Minneapolis increased during the two years between November, 1876, and November, 1878, at the rate of 11 per cent. per annum (see Minnesota State Register, 1879, Congressional Library, page 316). If we apply this percentage of growth to the vote of 1876, and suppose that the two political parties increased pro rata, then the vote should have stood in 1878 as follows :

Total Democratic vote	4,568
Total Republican vote	4,999

But instead of Mr. Donnelly receiving, in 1878, 4,568 votes in Minneapolis, he received but 1,566 votes; a falling off of 3,002 votes. And it appears that but a small part of this Democratic vote went to Mr. Washburn; for, if he received the full vote of his party, he should have had 4,999 votes, while he claims to have received 5,026 votes: a gain of only 27 votes.

It thus appears that there were nearly 3,000 Democratic voters who did not vote at all at the election of November 5, 1878.

The result was that, instead of the Republican majority given to President Hayes in Minneapolis of 355 votes, Washburn claims to have carried the city by 3,680 votes.

The evidence shows that Mr. Donnelly was the Democratic candidate for Congress, and that he received the support but not the votes of very nearly all the Democrats, even in Minneapolis (see pages 109, 110); the immense falling off of two-thirds of the Democratic vote in Minneapolis can, therefore, only be accounted for by the intimidation of the workmen, and the numbering of the ballots in nearly half the precincts of the city was part of this system of intimidation.

The evidence shows that the workingmen of the city regarded Mr. Donnelly as their friend and champion (page 112). They had a Labor Union, a political society, numbering about 2,200 members (page 111), and which represented the sentiments and feelings of the working population of the city, numbering between 4,000 and 5,000 (page 112); Mr. Washburn "had no friends in the Labor Union" (page 111); and the Union nominated Mr. Donnelly for Congress, at a large meeting, by a unanimous vote. The workingmen continued to support Mr. Donnelly until the day before the election (pages 141, 142). The evidence shows that a great revolution was wrought in the action of the Democrats on the eve of the election; a revolution which several witnesses state could only be explained by the use of money and intimidation (pages 98, 106, 141, 142, 277, &c.). Instead of receiving the 4,000 or 5,000 votes of the workingmen, or the 4,568 votes of the Democrats, to say nothing of the Greenback vote, Mr. Donnelly received but 1,566 votes in the entire city.

In the seven precincts where the ballots were numbered the vote stood as follows :

Ward.	Precinct.	Washburn.	Donnelly.	Majority for Washburn.
Second.....	First.....	187	42	145
	Second.....	265	42	223
Fourth.....	First.....	334	127	207
	Second.....	347	57	290
	Third.....	566	83	483
Sixth.....	First.....	364	95	269
	Third.....	219	76	143
Total majority for Washburn in these precincts.....				1,768

If we compare this vote with the vote cast in these same precincts seven months previously, to wit, at the municipal election of April 2, 1878, we find that the Republicans carried these seven precincts at that spring election by a total majority of 171, or 1,689 votes less than the majority claimed for Washburn.

At the same election, in the spring of 1878, the Republicans had but 164 majority in the city of Minneapolis; and yet they claim to have carried the city, seven months thereafter, by 3,680 votes.

In these seven precincts the vote at the spring election of 1878 was as follows:

Republican	1,215
Democratic	1,044
Total	2,259

At the Congressional election, November 5, 1878, the vote in these seven precincts was as follows:

Washburn	2,282
Donnelly	522
	2,804

Thus while the vote in the fall was but 545 more than it was in the spring, the Republican majority was ten times as great:

Republican majority spring of 1878	171
Republican majority fall of 1878	1,760

The total vote of the city in 1876 at the Presidential election was 7,841. If now we add 22 per cent. for the increase of population, the total vote in 1878 should have been 9,566; instead of that it was 6,592, a falling off of 2,964.

In round numbers the vote cast in 1878 was 52 per cent. less than the actual vote of the city. It is conceded that the canvass of 1878 was one of the most vigorous ever made in the city (page 106-7); but while it brought out the full Republican vote, nearly 3,000 Democrats failed to vote; or if any considerable part of them voted for Washburn, then an equal number of Republicans must have refused to vote for him. There can be no question that a large part of these men were the employes, who feared to vote for Donnelly lest they should lose their places.

It cannot be claimed that Mr. Washburn increased the Republican vote of the city from 355 to 3,680, and the Republican vote of the seven precincts from 171 to 1,760 because of his personal popularity; because it is in evidence that he was not popular (see pages 111, 277). A comparison of his vote in the district outside of Minneapolis, with the vote cast for Hayes in 1876, proves that he was very unpopular. The vote stands as follows:

Hayes, 1876	19,573
Washburn, 1878	14,653
Washburn ran behind Hayes	4,915

But, if from Washburn's vote there be deducted the railroad, bribed, and illegal vote of "Polk and Kittson County," 355 in all, he will be found to have run behind Hayes in the district, outside of Minneapolis, 5,270 votes, in a total vote of 19,573.

On the contrary, Mr. Donnelly's vote compares favorably with the total vote for Tilden and Cooper, in the district exclusive of Minneapolis, thus:

Tilden and Cooper	16, 126
Donnelly's vote	15, 926
and for votes of "Polk and Kittson County"	355
	16, 281

Donnelly runs ahead of Tilden and Cooper 155

Now we are asked to believe that while Mr. Washburn fell behind Tilden's vote outside of Minneapolis 5,270 votes, that he ran ahead of Tilden in Minneapolis 3,105 votes! And this, notwithstanding the fact that the population of Minneapolis consists largely of workingmen, who had placed Mr. Donnelly in nomination as their candidate for Congress, and among whom, it appears, Mr. Washburn "had no friends." And, notwithstanding the further fact, that Minneapolis may be regarded as a doubtful ground, politically. In 1876 the Democratic candidate for Congress, McNair, carried the city by about 500 majority, and the county by over 1,000 majority. In April, 1876, the Democrats and workingmen elected a Democratic mayor in Minneapolis by 356 majority, and carried the wards embracing the territory now embraced in the seven wards where the ballots were numbered by 525 majority. The vote stood therein:

Democrats	1, 372
Republicans	847

Democratic majority 525

The testimony produces the conviction that Mr. Donnelly was sweeping the district outside of Minneapolis and carrying all before him; that he was popular in Minneapolis, especially among the workingmen, and that the workingmen constituted a majority of the total population. That in this emergency the sitting member and his friends formed a conspiracy to arrest the tide of defeat by bribery and intimidation; and that their last intrenchment was the seven precincts where, in effect, they made the workingmen vote *viva voce* for Washburn or take the chances of starvation. And it is a singular and suspicious circumstance that the vote of two of these seven precincts, two precincts where Washburn claims 706 majority, were not returned until eight days after the election, although they should have been returned on the morning after the election; and then when they were returned one of the two precincts is claimed for Washburn by 483 majority, while one of the clerks of the election therein, produced the original tally-sheet of the election, showing but 26 majority for Washburn in that precinct instead of 33. (See page 275.) And when the counsel for Washburn, in the performance of his professional duty, subpoenaed the officers in charge of the ballot-boxes to produce the ballots of these precincts, knowing, as a lawyer, that that was the best and therefore the proper legal evidence of the actual vote cast; and when the officers stood ready to have the votes counted, the contestee held his counsel back, and permitted the ballot-boxes to be returned unopened. Was this done because he preferred to risk the throwing out of 706 of his majority rather than have the secrets of those ballot-boxes, where the votes had been numbered, revealed to the public eye? What powerful motive could have constrained him to such a course?

In *Williams vs. Stein* (38 Ind. Rep., page 90), the court held that numbering of the votes does not violate the secrecy of the ballot as much as if the law had required the voters to vote *viva voce*; and McCrary (American Law of Elections, section 446) says, "Votes must be cast in the manner provided by law. Under a statute requiring that the manner of voting shall be by ballot, votes given *viva voce* cannot be counted."

Upon an elaborate review of the authorities the conclusion is reached, upon what seems to be good ground, that in this country the ballot implies absolute and inviolable

ble secrecy, and that this doctrine is founded in the highest considerations of public policy. That the term ballot implies secrecy, and that this mode of voting was adopted mainly to enable each voter to keep secret his vote, is clear. (McCrary on Elections, section 413, page 112, and authorities there cited; Cooley, Constitutional Limitations, pages 506, 507, and 604.)

The chief reason for the general adoption of the ballot in this country is that it affords to the voter the means of preserving the secrecy of his vote. And this enables him to vote independently and freely, without being subject to be overawed, intimidated, or in any manner controlled by others, or to any ill-will or persecution on account of his vote. The secret ballot is justly regarded as an important and valuable safeguard for the protection of the voter, and particularly of the humble citizen against the influence which wealth and station may be supposed to exercise. * * * All devices by which the secrecy of the ballot is destroyed by means of colored paper used for ballots, or by other similar means, are exceedingly reprehensible, and whether expressly prohibited by statute or not should be discountenanced by all good citizens. (McCrary on Elections, section 194; *People vs. Pease*, 27 N. Y., pages 45 and 81).

We have therefore reached the conclusion that the votes cast in the seven precincts where the ballots were numbered should be deducted, not alone because they were so numbered, but because such numbering was corruptly done, with an intent to intimidate the workmen residing in those precincts; and because it was part of a general conspiracy of the friends and supporters of Mr. Washburn to prevent a free and untrammelled expression of the preferences of the voters.

SUPPLEMENTAL RETURNS.

Through the error of the secretary of state of Minnesota in not furnishing the proper return-blanks to the officers of the election precincts of the State, there were a number of instances where the votes polled for the candidates for Congress were not returned to and counted by the county canvassing boards. In the case of the votes not so returned and canvassed in certain precincts of the counties of Stearns and Morrison it was conceded and agreed by both parties that the votes had been cast and should be counted. These votes were as follows (see pages 260, 284):

STEARNS COUNTY.

Precinct.	Washburn.	Donnelly.
Crow Lake.....	7	11
Holding.....	26	64
Township of Saint Cloud.....	7	93
Sauk Centre.....	96	160
Fourth ward, city of Saint Cloud.....	8	68
	144	396
Majority for Donnelly.....		252

MORRISON COUNTY.

Two Rivers.....	30	120
Swan River.....	38	45
	68	165
Majority for Donnelly.....		97

Supplemental returns were made eight days after the election by some of the officers of three precincts of the city of Minneapolis; but it is very clear that the election officers of the precincts had performed their

duties on the night of the election; had dissolved, and were *functus officio*, and had no right to make any such supplemental returns. Mr. Washburn claimed majorities in each of these precincts, and he therefore undertook to prove the votes cast *aliunde*. In strictness of law it was his duty to have proved the votes cast by the best evidence, to wit, by counting the ballots in the ballot-boxes; and he took some preliminary steps to that end, issuing a *subpœna deces tecum* to the officers who had charge of the ballot-boxes to appear at a time named, in order that the ballots might be counted; but, as we have shown, for some reason he refused to count the ballots. There was a wide diversity in the evidence as to one of these precincts, the third precinct of fourth ward, one side claiming that Mr. Washburn had a majority of 483 votes and the other side claiming that he had but 26 majority. But we have not felt obliged to enter into these questions, inasmuch as two of these precincts, viz, the second precinct of the second ward and the third precinct of the fourth ward, were precincts in which the ballots were numbered, and they have been already disposed of in our finding upon that question. In the other precinct, the first precinct of the first ward, there was a conflict of testimony as to what the vote really was; but the burden of proof establishes to our satisfaction that in this precinct Washburn received 140 votes and Donnelly 132; and although this was not established by the best evidence we are willing to admit the vote as such.

In the township of Leaf Valley, Douglas County (page 270), Mr. Donnelly received all the votes cast for Congressman, to wit, 61 votes; they were not returned or counted for him. These votes are to be added to the respective candidates.

ISANTI COUNTY.

The statutes of Minnesota (section 19, page 58, revision of 1866) provide that the county canvassing board of each county shall consist of the county auditor and two justices of the peace, to be by him selected. In the case of Isanti County the canvass was made, the votes counted, and the return made by the county auditor, one justice of the peace, and the judge of probate of the county. (See page 69, printed testimony.) It is true that sub. 3, section 1, title 1, chap. 3, vol. 1, Bissell's Stat. of Minn., provides that "words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such persons or officers." If the county auditor had selected two justices of the peace, and one had failed to attend, then the majority present might, under this law, have gone on and acted; but in the case of Isanti County the county auditor did not select two justices of the peace as the law required; the board of canvassers, therefore, was never constituted as required by law, and never having had a legal existence, there could be neither majority nor minority of it.

In the contested-election case of Howard *vs.* Cooper, of Michigan, Thirty-sixth Congress (see Contested Elections, 1864-'65, page 282), the Committee on Elections say:

Your committee have rejected the vote of the township of Van Buren. The law requires that the board of inspectors shall be constituted of three persons in number. The proof is clear that there were but two. And as there was no board of inspectors known to the law, your committee see no way by which any legal effect can be given to the returned vote. They have therefore deducted it.

In this case it was shown that there was a statute of the State of

Michigan precisely the same as that just quoted from Minnesota, giving a majority of a board the power to act for the whole board; but the committee did not consider that it was sufficient to permit them to receive and count the return.

But if we will suppose that the board of county canvassers of Isanti County had been duly constituted as required by law, and that a majority had the power to act for the whole board, nevertheless the return could not be received, for it appears upon its face that a third party, not a member of the board, a stranger not qualified to act, an usurper without color of authority, intruded himself into the deliberations of the board and acted as one of them, and in all cases where the county auditor and the justice of the peace differed in opinion he gave the casting vote, and thus decided the action of the board. The statutes of Minnesota show that a judge of probate has none of the functions of a justice of the peace, and the constitution of the State (section 7, article VI) provides that a probate court "shall have no other jurisdiction except the estates of deceased persons and persons under guardianship." There is no testimony to show that this judge of probate was at the same time a justice of the peace, and if he had been, his exercise of the office of justice of the peace would have been incompatible with the spirit of the constitution of the State.

In the case of *James Jackson vs. Gen. Anthony Wayne* (Clark & Hall, page 47), a Georgia case, decided in 1791, it was held that "where the law requires three magistrates to preside at an election, and a return was made by three persons, two of whom were not magistrates, the return was defective," and the vote of the county was rejected.

In the case of *Rufus Easton vs. John Scott* (Clark & Hall, page 272), a Missouri case, decided in 1816, held: "If an election is required by law to be held by three judges who are required to be sworn, and it is held by two not sworn, their proceedings are irregular, and the votes taken by them are to be rejected."

In the case of *Sloan vs. Rawls* (Contested Election Cases, 1871-'76, page 144), a Georgia case, decided in 1874, it was held that a county canvass or consolidated return of the vote of the county of Bullock (containing 1,061 votes), should be rejected, although the same was in due form and with the names of the proper officers signed to it, because it appeared that the canvass was made by a usurper, a stranger, a man "who had no legal connection whatever with the election, and no right to the possession of any of the papers."

It is urged that although the judge of probate was not a justice of the peace, we must regard him as such *de facto*. Lord Ellenborough said, in *The King vs. The Corporation of Bedford Level* (6 East., 368):

An officer *de facto* is one who has the reputation of being the officer he assumes to be, and is not a good officer in point of law.

Charles O'Connor, in his argument before the Electoral Commission, said (see Electoral Commission, page 132):

The *de facto* officer is one who somehow has clothed himself with the reputation of being the officer, and in relation to that person the law, with its wise conservation, has declared that during the period that the person *pretending title to the office* was in apparent possession of all its powers and functions, and exercised the duties of it, his acts, as it respects persons who in the ordinary course of things were obliged to recognize him and to act under him, and in conformity with his directions and his power, shall be esteemed valid, that individuals may not be deceived by this species of disorder or temporary insurrection that has broken in upon the functions of government.

The principle does not apply to the case under consideration.

Here the judge of probate did not claim to be a justice of the peace;

he did not exercise the duties of the office under *color of law*; he did not exercise them at all; he distinctly claimed that he was a judge of probate and nothing else. It has never been pretended, in any court in the world, that when A B asserts himself to be the incumbent of one office a presumption of law arises that he holds another, an entirely different, and (as in this case) an incompatible office.

A party claiming to be a judge of an election precinct, or a sheriff, or a judge may deceive and mislead innocent third parties to their damage; and hence the law wisely says that he who deals with such officers shall not be required to go back and inquire into every particular of their title. But in this case there is no pretense that any one was or could have been misled by the declaration of the judge of probate that he was the judge of probate.

Neither is this a collateral proceeding between third parties. The validity of the return itself, and the right of the judge of probate to act, are the very questions in issue. The canvassing board of Isanti County was part of the machinery by which the votes cast for member of Congress in that district is to be brought to the knowledge of the House of Representatives, "the sole judge of the election returns of its members."

It must also be remembered that in the cases cited, as decided by former Congresses, the votes of townships were cast out because the boards of election judges, or the clerks thereof, were not constituted according to law. This being the law as to mere precinct officers, how much more strongly does the principle apply to the case of a canvassing board of a county where the votes, not of one precinct alone, but of all the precincts of the county are involved? An election judge can only rule out a few voters, a canvassing board may rule out the votes of entire townships. Although the canvassing board is a ministerial body, nevertheless there are many preliminary questions upon which they are called to decide, and which require the exercise of their best judgment. Among these are the following: Whether the returns are the actual returns or forgeries; whether they are so informal or irregular as to prevent the board determining what the vote really was; if two returns come in from the same precinct, which is the proper return; if votes are cast bearing a name nearly the same or somewhat similar to the name of one of the candidates, whether they should be counted for such candidate; if votes are cast for A B (who is a candidate for Congress) as a candidate for the State legislature, whether such votes should be returned for him as a candidate for Congress. These and a hundred other similar questions may arise requiring the exercise of judgment; and per consequence the functions of the board of county canvassers is as far superior to the functions of mere election officers as the powers of a State canvassing board are above the powers of a county canvassing board. How important, then, does it become that the county board of canvassers shall be constituted in strict conformity with law, and that no usurpers shall be permitted to intrude into and control its deliberations.

In the case of *Delano vs. Morgan*, Ohio (2 Bartlett, page 171), it seems that a person acted as one of the judges of election who was believed to have been a deserter, but had never been convicted of the crime. The Committee on Elections say (and the House sustained the report):

In the case of *Howard vs. Cooper*, (Cont. Elect. 1864-'65, page 282), the returns of Van Buren Township were rejected because there were only two judges. If a return is unworthy when one of the judges is absent, it is certainly more so if the vacancy is filled by a person disqualified to act. Two competent judges are certainly more reliable, when acting by themselves, than when advised, directed, and in part overruled by a third, pronounced by the law unfit for the trust.

In *Morgan vs. Delano*, the disqualification of this third party was inferential; for as he had never been convicted of desertion the presumption of law was that he was not guilty; but in the case of the canvassing board of Isanti County the disqualification of the judge of probate was statutory, absolute, and appears on the face of the return.

If the objection to this return was purely technical we might hesitate to reject it; but it appears that the *bona fides* of the vote were put in issue by the pleadings.

The contestant, Donnelly, in his notice of contest, article VIII, declared:

That the votes alleged to have been cast for you (Washburn), at said election in the county of Isanti, in said district, were not cast or counted for you, or returned or canvassed as provided by law.

There are here four averments: (1) That the votes were not cast; (2) that they were not counted (by the precinct officers); (3) that they were not returned as provided by law; (4) that they were not canvassed as provided by law. The contestant having established by the return itself, the truth of the last two charges, it became the duty of the sitting member to prove by a counting of the votes in the ballot-boxes that the votes were actually cast as claimed by him, and by proper testimony that they were duly counted by the precinct officers. As he has failed to do this, the presumption of law is that he was unable to do it. There was no obligation upon the part of the contestant to prove or disprove votes that had no existence before the committee in any legal return, while Mr. Washburn well knew that the fact of any such vote being cast in the county was denied by contestant and that the burden of proof was on him to prove it. The committee has no way to ascertain the votes cast except by the official return, and, where this is manifestly void, by testimony showing what the vote really was.

POLK AND KITTSOON COUNTIES.

The return upon which the votes of these counties is based is extremely imperfect. It is as follows (page 64):

Abstract of votes cast in the county of Polk & Kittson and State of Minnesota at the general election held in the several townships and wards of said county on the first Tuesday after the first Monday, being the fifth day of November, A. D. eighteen hundred and seventy-eight (1878), for members of Congress, taken from the official returns.

MEMBER OF CONGRESS—CONGRESSIONAL DISTRICT—NAMES OF CANDIDATES.

Names of townships and wards.		W. D. Washburn.	I. Donnelly.	I. Donnelly.
Bygland	32			
Farley	9			
Vineland	35			
Fosum	50			
Andover	21			
Red Lake Falls	78			
Lowell	26		1	
McDonaldville	36		1	
1st district	23			
Fisher	37			
Hunteville	46		1	
Nelly	41			
Crookston	213			
Kittson Co., Tamrac River	109			
Kittson Co., Two Rivers	74			
Total number of votes	832			

We do hereby certify that at said election W. D. Washburn received eight hundred and thirty-two (832) votes for member of Congress; I. Donnelly received one hundred and eighty-two (182) votes for member of Congress.

A. YVERNAULT,
County Auditor.

Attest:

D. C. PALMER,
T. A. HARRIS,
Justices of the Peace.

There is an unorganized county of Kittson in the third Congressional district of Minnesota, as appears by the abstract of votes returned by the secretary of state (page 347), and there is also an organized county of Polk; but there is no "county of Polk and Kittson." (See page 346.) And there is no law linking these counties together. It appears by the testimony (page 40) that "the county of Kittson is not attached to any other county for any purpose, either judicial or election." The county out of which it was created, Pembina County, was attached to Clay County (Stat. of Minn., 1876, p. 127). If, therefore, any part of the above returns refer to the unorganized county of Kittson they should not have been returned to, canvassed with, or mixed into the returns of the organized county of Polk. The foregoing certificate is not a return of votes cast in Polk County or of votes cast in Kittson County, but the vote is lumped together as the vote of "the county of Polk and Kittson," and there is no such county in the district. And if we attempt to separate the precincts in Kittson County from the precincts in Polk County, so as to enable the county of Polk to be counted by itself, we are met by the fact that Farley is shown by the testimony (page 226) to be in Kittson County, although there is nothing on the face of the return to show that fact. There is no evidence to show in which county the precincts of Bygland, Vineland, Folsom, Andover, Lowell, McDonaldville, first district, Huntsville, and Nelly are situated. Neither does it appear by the return or in the evidence that the county auditor and justices of the peace who signed the return held those offices in Polk County or in Kittson County, or in any other county.

Moreover it appears (page 233) that there were but 86 legal votes cast at Crookston, while the total vote returned as above was 258. There were therefore 170 illegal votes cast at that precinct; they were principally the railroad hands referred to in this report in our consideration of the subject of bribery, every one of whom was paid for his vote. It also appears (page 234) that there were but 40 residents of the precinct of Fisher, while 88 votes are returned from that precinct. The precincts in the county of Kittson were not legally established, there being no law to authorize the governor to create election precincts in wholly unorganized counties. There were no registration lists at these precincts; cigar-boxes and candle-boxes without locks or keys were used for ballot-boxes. In one precinct the voting place was a railroad car; in another a railroad depot. Nearly if not quite every vote polled in two precincts of the county, as we have shown, was a bribed vote, and cast in the majority of instances by men who were not legally residents of the county and entitled to vote therein.

This fraudulent vote of Kittson County having been inextricably mixed into whatever legal votes were cast in Polk County, it became the duty of the sitting member to go behind this very defective certificate of "the county of Polk and Kittson" and prove *aliunde* what townships were in Polk County, and by a count of the ballots in the ballot-boxes of those townships establish beyond question what votes

were legally cast therein. Having failed to do this we are constrained to reject the return.

THE UNORGANIZED COUNTIES.

It appears by the evidence that a number of the counties in the third Congressional district of Minnesota are unorganized counties. The following table gives the names of the counties and the votes cast therein:

	Washburn.	Donnelly.	Majority.
Big Stone	45	29	.....
Douglas	682	489	.....
Kanabec	109	24	.....
Lake	29	755	.....
Otter Tail	940		.....
Majority for Washburn	1,805	1,297	508

It was decided by the supreme court of the State of Minnesota, July 29, 1878, in the case of State, *ex rel.* Lindholm, *vs.* Parker, that the county of Big Stone was not an organized county, inasmuch as the legislature had never passed an act declaring it organized. The court held that neither an act defining the boundaries of a county nor the vote of the people therein electing county officers constituted a county organized; the legislature must recognize the action of the people by explicitly declaring it an organized county. The counties of Douglas, Kanabec, Lake, and Otter Tail are in the same condition as the county of Big Stone. Mr. Washburn did not produce any statute to show that the legislature had ever declared either of them organized. It follows that if these counties are not organized counties there can be no county officers in existence therein; and that those who claim to have canvassed and returned the votes of the counties had no power to do so; nor can there be any legal election precincts therein. But your committee are not disposed to take a technical view of this matter, and although we are of opinion that the counties in question are not legally organized, nevertheless, as the votes returned are conceded to have been actually cast therein, and there is no charge of fraud, we have concluded that the four counties last named should be regarded as *de facto* organized counties, so far at least as election purposes are concerned. We also admit the vote cast in the unorganized county of Big Stone, for the reason that it is admitted by contestant that the vote was actually cast; and there is no charge of fraud in connection therewith.

We therefore admit the votes of these unorganized counties. They give a majority for Mr. Washburn of 508.

It will be seen that in the foregoing report we have not rejected the vote of any county because it was unorganized; neither have we rejected the vote of any precinct because of the numbering of the ballots *per se*, but because such numbering was one of the incidents of a system of fraud and intimidation; neither have we rejected the votes of any counties for mere informalities on the face of the returns, but only for those gross irregularities which were manifestly incompatible with a legal canvass of the votes.

The following table summarizes the results of our investigations in this case:

SUMMARY.

The total vote returned for William D. Washburn was	20,942
This includes the supplemental returns from Hennepin County.	
Add to this the votes cast but not returned for him, in the counties of Stearns and Morrison, viz: Stearns, 144; Morrison, 68—total	212
	<u>21,154</u>

Deduct:

The numbered ballots cast for him in the seven precincts of Minneapolis, viz	2,282
The vote returned for him in the county of Isanti	538
The vote returned for him from "the county of Polk and Kittson"	832
	<u>3,652</u>
	<u>17,502</u>

Deduct also the following bribed votes (not included in the bribed votes already rejected in Polk and Kittson County), where the evidence shows the party received money and voted for Washburn: (1) Oluf Larson, Saint Paul; (2) Abraham Werrick, Saint Paul; (3) William M. Leyde, Cottage Grove; (4) Christian Heyer, Afton; (5) John C. Oleson, Minneapolis; (6) A. M. Schaack, Minneapolis; (7) Karl Fintler, Minneapolis; (8) Henry Monroe; (9) Sevit Mahla, of Minneapolis; (10) Louis Knudson, Minneapolis; (11) Louis Paulson, Minneapolis; (12) W. R. Metcalf, of Crystal Lake; (13) Peter Quady, Minneapolis; (14) Louis N. Gaynor, Minneapolis; (15) Peter Engberg, Minneapolis; (16) Bernard Cloutier, Minneapolis; (17) Toleff G. Fladeland, of Sauk Center; (18) J. V. Brower, of Saint Cloud; (19) A. J. Clark, Little Falls; (20) Thomas Kitowski, of North Prairie; (21) Mr. Buss, of Long Prairie; (22) Henry Armstrong, of Two Rivers [this list does not include a large number who admit the receipt of money from Washburn or his friends but claim that they voted for Donnelly]—total

22

	<u>17,480</u>
Total vote returned for Ignatius Donnelly	17,92
Add to this the votes cast but not returned for him from the counties of Stearns, Morrison, and Douglas viz: Stearns, 396; Morrison, 165; Douglas 61: total	622
	<u>18,551</u>

Deduct:

The numbered ballots cast for him in the seven precincts of Minneapolis, viz	522
The vote returned for him—in the county of Isanti	137
The vote returned for him from the county of Polk and Kittson	182
	<u>841</u>
	<u>17,710</u>

Total vote for Donnelly	17,710
Total vote for Washburn	17,480

Majority for Donnelly..... 230

We would therefore report and recommend the adoption by the House of the following resolutions:

Resolved, That William D. Washburn is not entitled to his seat as a member of the Forty-sixth Congress of the United States, as Representative from the third Congressional district of the State of Minnesota.

Resolved, That Ignatius Donnelly is entitled to his seat as a member of the Forty-sixth Congress as Representative from the third Congressional district of the State of Minnesota.

VAN H. MANNING.
S. L. SAWYER.
R. F. ARMFIELD.
F. E. BELTZHOVER.
W. G. COLERICK.

VIEWS OF THE MINORITY.

Held, That no bribery on the part of contestee or his agents is proven, the only evidence touching on that point being hearsay. Bribery must be proved, and not presumed. Fraud or bribery does not vitiate what it does not impregnate.

Held, That, notwithstanding ballots are numbered in the absence or violation of law, they are to be counted.

Held, That where the law requires certain acts to be performed by a board of three or more persons, it is sufficient for a majority of such board to act and join in the certificate.

Mr. KEIFER, from the Committee on Elections, submitted the following

VIEWS OF A MINORITY.

The contest in this case arises over the election for member of the House of Representatives in the third Congressional district of the State of Minnesota, held on the 5th day of November, 1878. This district is composed of thirty-eight counties, situate in the northern part of that State, and comprises a very large territory, which has been very rapidly settling up by emigration from other States in the Union. The returned vote at that election for member of the House of Representatives was as follows:

W. D. Washburn	20,942
Ignatius Donnelly	17,929
Scattering	40
The returned majority for Washburn was	3,013

This district was created on the 22d day of February, 1872, by act of the legislature of Minnesota. It has always been Republican by a large majority. The Republican majority for Congressman in this district in 1872 was 6,449; in 1874, 2,319; in 1876, 2,096; in 1878, 3,013. The Republican majority in this district for governor in 1877 was 8,153, and in 1879 Pillsbury's (Rep.) majority over Rice (Dem.) was 5,681.

A portion of the committee have decided to add to Mr. Washburn's returned vote of	20,942
The unreturned vote in the counties of Stearns (144) and Morrison (88)	212

Thus increasing his vote to	21,154
From this it is proposed to deduct by throwing out and rejecting—	
The numbered ballots cast for him in seven precincts of Minneapolis, to wit	2,282
The entire vote returned for him in the county of Isanti	538
The total vote returned for him from the counties of Polk and Kittson ..	832
Alleged bribed votes	22

Total to be deducted	3,674
Leaving Mr. Washburn's vote	17,480

It is further proposed to add to Mr. Donnelly's returned vote of	17,929
The unreturned votes alleged to have been cast for him in the counties of Stearns, Morrison, and Douglas	622

Thus increasing his vote to	18,551
From this it is proposed to deduct the numbered ballots cast for him in the city of Minneapolis	522
The vote returned for him in the county of Isanti	137
The vote returned for him in the counties of Polk and Kittson	182

Total to be deducted	841
Making Donnelly's vote	17,710
And his majority over Mr. Washburn	230

The testimony in this case, and the arguments of counsel, have compelled the committee to examine a great many questions foreign to the contest, as made on the contestant's notice. That notice consists of nine paragraphs, very few, if any, of which state, as required by the law of Congress, except in very general terms, the grounds upon which the contestant relies. The law, as set forth in section 105 of the Revised Statutes, requires that the contestant, in his notice, shall specify *particularly* the grounds upon which he relies in the contest. This the contestant has not done, although the nature of his contest is such that he could have done so, and should have been required to do so; or, otherwise, the great mass of his testimony should have been disregarded. The United States statute requires that "the testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice or answer," &c. (R. S., section 105.)

It may be true that the law of Congress prescribing the mode of practice to be followed in the House in contested-election cases is not absolutely binding upon the House in view of the provisions of the Constitution of the United States (Article I, section 5), which provide that "each house shall be the judge of the elections, returns, and qualifications of its own members." But it might work very great injustice to a contestee to require him to meet a case outside of this parliamentary-practice act, without any previous notice to him that the House intended to depart from it in a material respect.

Until the House itself lays down and prescribes a different mode of contesting elections before it, the parties to the contest have a perfect right to rely upon the statute being strictly observed and followed. (McCrary's Election Laws, sections 341-3, 348-9, 353; Finley *vs.* Bisbee, Rep. 95, page 28.)

It has frequently been held by the House that, notwithstanding proof was offered sufficient to show that frauds had been committed, such proof would not be considered because the contestant did not specifically notify the contestee of such ground of contest.

For a full discussion of this point, attention is called to the views of the late Speaker Kerr in the case of Delano *vs.* Morgan (Com. Elec. Cases, 1865-71, pages 176-8).

Before proceeding to consider the case as made by the notice and on the testimony, it is thought proper to refer to the character of evidence relied upon by the contestant. It will be found by an examination of the record that there is very little, if any, testimony which would be received or considered in any court of justice in this or any other civilized country. The testimony may be, generally, denominated hearsay. In so far as it relates to the question of bribery or illegal voting very little of it rises even to the dignity of *hearsay* when scrutinized. It is understood that certain members of the committee, in order to arrive at the conclusion reached by them, have considered all, or very nearly all, of such incompetent testimony found in the record. With the single exception that in the case of a voter who has voted for the sitting member, declarations of the voter are inadmissible. There are authorities, though they even are doubted, to the effect that the declarations of a voter, though hearsay evidence, are competent to prove his want of qualification to vote. It is seldom, if ever, proper to regard hearsay statements as competent evidence. Regarding the testimony as affecting the voter, and no other person, his statement as to his qualification to vote may be taken as an admission against him. The ordinary rules of evidence apply as well to election contests as to other cases. (See McCrary's American Law of Elections, section 306.) We do not think

it necessary to cite many authorities in support of this proposition, but we here give a few, as this question is a very important one in the determination of this case:

AUTHORITY AS TO HEARSAY EVIDENCE IN CONTESTED-ELECTION CASES BEFORE PARLIAMENTARY BODIES.

In Cushing's Law and Practice of Legislative Assemblies, at section 210, page 76, the following doctrine is laid down:

"The same general rules by which courts of law are governed in regard to evidence in proceedings before them prevail also in the investigation of cases of controverted elections; but inasmuch as a legislative assembly, touching things appertaining to its cognizance, is 'as well a council of state and court of equity and discretion, as a court of law and justice,' the legal rules of evidence are generally applied by election committees, more by analogy and according to their spirit, than with the technical strictness of the ordinary judicial tribunals."

Section 11. "The rule stated in the preceding paragraph relates of course only to investigations by the testimony of witnesses or other evidence before the assembly or its committees, but where the testimony is contained in depositions, they ought to be taken according to the law of the State where they are taken."

Section 742, page 293. "The proceedings of a legislative assembly frequently render it necessary to institute inquiries into matters of fact, and of course to receive and judge of the various kinds of evidence upon which human conduct is predicated, and which may be submitted to its consideration. In the every-day affairs of life, and in reference to matters in which *their own interests are alone involved*, men act upon every kind of evidence which has even the slightest tendency to induce belief. *But in regard to affairs in which parties are adversely interested, and in which there are conflicting rights and claims to be adjudicated*, the law has wisely provided that only such evidence shall be received, and under such circumstances, as shall afford reasonable security both against designed falsification and unintentional mistake."

Section 743, page 293. "The rules of evidence by which courts of justice are governed, and by which their proceedings are regulated in the investigation of the cases which come before them, make a part of the civil rights of the citizens, as much as the rules regulating the acquisition, the enjoyment, or the transmission of property, or which govern any other matter of civil right; and when a question of the same nature is pending in the legislature, involving private interests only, no good reason can be assigned why the rules of evidence should not be the same. It would seem reasonable, therefore, to regard it as a rule of parliamentary practice that when the private interests of individuals are the subject of investigation, or, in other words, where the investigation is a judicial one, *and so far as it is of that character*, the same or analogous rules of evidence should be applied as would be observed in the investigation of similar interests in any of the courts of law or equity, and this appears to be the rule which has prevailed in modern times."

Cases of contested elections in Congress, 1834 to 1865.

White *vs.* Harris, page 257.—In this case, on pages 264-5, the question of the admissibility of hearsay testimony is discussed; it was rejected. Report by Hon. Thomas L. Harris.

Same book, page 33. (Ingersoll *vs.* Naylor.)—*Syllabus*: "Where extensive frauds were alleged, the committee refused to receive hearsay evidence."

On page 34 the question of the hearsay evidence is discussed and the evidence rejected.

Same book, page 19. (The New Jersey Case.)—*Syllabus*: "Held by the committee that hearsay declarations of the voter should be rejected."

On page 24 of the report of this case the committee, in discussing the question of what votes were actually cast at the polls, use this language:

"The first proposition involved the inquiry whether the vote was actually cast at the polls, and for the ascertainment of this point the committee necessarily resorted to parol proof as the best evidence which the nature of the case would admit of, *the laws of New Jersey not requiring the poll-lists to be preserved as a record of the actual voters. Mere hearsay declarations of the alleged voter as to the fact of his having voted have been uniformly rejected.*"

Cases of contested elections in Congress, 1865 to 1871, page 822.

John S. Reid *vs.* George W. Julian.—*Syllabus*: "Hearsay evidence inadmissible." (See also McCrary's Law of Elections, section 306.)

Hearsay evidence is not admissible to prove bribery as a *disqualification*, but only to

effect or annul individual votes. (Cowen & Hill's Notes, 704-7; 3 McCord (S. C.) Rep., 30, note; People vs. Pease, 27 N. Y., 45, 49.)

It is proper to observe that much of the hearsay evidence relied upon consists only of conclusions drawn from conversations held after the election, which are always unreliable, and as a general rule, even though the testimony would otherwise be competent, are regarded as very dangerous if at all admissible in a court of justice. Of this latter class of testimony a learned judge has said:

No class of testimony, perhaps, is more unreliable, and a more frequent cause of error in courts of justice, than the narration of conversations, real or pretended. The meaning and intention of a person in a conversation often depend much upon gesture, attitude, mode of expression, or peculiar attending circumstances, known, perhaps, to but few present. A conversation may not be fully heard by the witness, imperfectly recollected, or inaccurately repeated, when the omission or addition of a single word, or the substitution of the language of the witness, under color of bias or excitement, or the words actually used, might change the sense of an entire conversation. This is apparent from the irreconcilable contradictions daily manifested in the narration of the same conversations from the mouths of different witnesses. The liability to error, in this kind of testimony, would be greatly increased by allowing witnesses to add their own *conclusions*, or *understandings*, from the conversation related, or their inferences as to the *understanding* of the parties to the conversation. Such latitude would break down an important barrier which protects judicial investigation from error and falsehood. The understanding or inferences of witnesses are very frequently formed from bias, inclination, or interest. And a witness's understanding or inference from a conversation or transaction rests entirely in his own mind, and his consciousness of falsehood would be incapable of proof; so that there could be no possibility of convicting a witness of perjury on the ground of such evidence. (Judge Bartley, 3d Ohio St., p. 412.)

It may be further noted that the charge of bribery, like that of fraud, must be proved and not presumed. This is a universal rule of law when it is sought to convict a party of a crime. There is a difference of opinion among members of the committee as to what rule should prevail in a contested-election case in proving the crime of bribery. Some members of the committee maintain that it should be proved, as in criminal cases, "*beyond a reasonable doubt*." Others are satisfied with the rule which requires the testimony to be "*clear, satisfactory, and convincing*," but all should agree that so serious an offense as bribery should be proved and not presumed.

THE CHARGE OF BRIBERY.

Before going into the testimony and considering it in the light of proper rules of evidence, it should be said that there is evidence tending to show that in this district the friends of the contestant and contestee both used money to poll the district (pp. 86-7 and 255), and to provide means for getting to the polls voters who were remote from the polling places, and who were often without conveyances of their own in which to travel to the polls on election day. Money was undoubtedly spent to pay canvassers before the election, and in some instances men were employed at the polls to hold tickets for the respective parties. The district is a very large one in point of population and in extent of territory, and in consequence of this, greater effort was required to get out a full vote. Some money was also expended to pay speakers to go over the district. The committee is not prepared to say that such use of money is entirely illegitimate. It is very common, if not universal, in all contested elections throughout the United States for candidates and their friends to use such means to secure votes. Presidential elections are not exceptions in this respect.

Certain members of the committee rely very much upon the fact that

the sitting member was not willing to dignify the case of the contestant by calling witnesses to disprove the alleged testimony offered by him. It is a sufficient answer to this to say that there is very little in any of the testimony offered by the contestant for the purpose of proving bribery that is in any sense worthy of being met by any testimony, even though it could be regarded as competent testimony. A reading of the testimony of the several witnesses will show in most, if not all, the cases that it proves nothing that is worthy of answer. The witnesses called in many instances only make clear the fact that they were disappointed parties who desired to be bribed by being paid large sums of money, which they were disappointed in obtaining. The first witness mentioned in the report of the committee, a Democrat, by the name of Charles Berens, of Morris on County, is an example of this. He testifies that he wrote a letter to Mr. Washburn requesting to be paid fifty dollars to support him. It is not clear that this letter was ever received by Mr. Washburn in person. Mr. Berens received no answer from Mr. Washburn to this letter, and he received no money from Mr. Washburn. Some of the committee, however, lay much stress on the fact that Mr. Washburn, or some of his friends, did not, prior to the election, indignantly resent the proposition made to him by Berens as an insult. There was no good reason why Mr. Washburn, or any of his friends, should have done so. They were undoubtedly anxious not to make any enemies, even though they were wholly unwilling to pay a man for his support. It will be noticed that Mr. Berens did not propose to sell his vote to Mr. Washburn, but simply, as appears by the whole testimony of this witness, to work for Mr. Washburn, presumably to get out voters, or to induce, by argument or otherwise, other persons to vote for him (p. 300). It appears from the testimony of this witness that he wrote also to Mr. Donnelly, to solicit him for money as an inducement to support him at that election (p. 301). This witness says that had he received the fifty dollars which he solicited, he would not have supported Mr. Washburn; and in the conclusion of his testimony he utterly disproves the charge, so far as his knowledge goes, that any money was used by Mr. Washburn or his agents to influence persons to vote for Mr. Washburn at the election. As Berens opened negotiations with Donnelly and supported him (p. 301), the only presumption that can arise, if any, is that he bribed him. This witness refers to a Mr. Brower, who, it is claimed, acted for Mr. Washburn in the vicinity of where he lived. But it turns out that, notwithstanding his vigilance in trying to find that somebody had been bribed, he utterly failed. The following questions to this witness, and the answers thereto, set at rest this witness's testimony, so far as bribery is concerned (Record, p. 301):

Q. Do you know of Brower's paying any money to any person for his vote for member of Congress or for any other candidate to be voted for at the last election, held November 5, 1878, or during the canvass immediately prior thereto?—A. I did not see him give any.

Q. Do you know of any money being paid or promised by William D. Washburn or his agents, or by any person or persons acting for him with his knowledge, to any person or persons during the last election, held November 5, 1878, or during the canvass immediately preceding said election, for such person or persons' vote or votes or influence for William D. Washburn for member of Congress for the third Congressional district of Minnesota?—No; that I know of.

Q. Do you know of any person in this vicinity trying to corrupt a candidate for Congress by demanding of such candidate \$50 as a consideration for his supporting such candidate at said election?—A. I did it myself.

There is an attempt to show that in the county of Kittson certain persons were bribed to vote for Mr. Washburn. If this were true, there is no evidence even tending to show that he was in any sense a party to

it. The committee seem to think that the number of votes cast in this county was too great. The total vote of the county was 184. It is true that two witnesses testify on this point. The first, G. C. Morton, says (p. 125), "to the best of my knowledge there were four actual settlers in this county"; and then he adds, "that is all I know." The second, Dennis Reardon, says (p. 144), to use his own language, referring to this same county, "it was unsettled, so far as I saw, except the railroad." On this testimony it is proposed to find that a large number of persons voted who were not legal voters, and also that they were bribed. The committee fails to take into account that in new countries it is along the railroad chiefly that men settle, and that settlements spring up as rapidly as railroads are built. The testimony of Reardon shows that there were people settled along the railroad, and it is this class of men who are denominated as "*harvest hands and tramps, who had not been in the State long enough to vote.*" The witness Morton, so much relied upon, says in his testimony that he had only resided in Kittson County *eleven days* before the election, and, of course, he could have had very little means of knowing who were residents and who were not; and on a cross-examination it is made to appear that he did not know a single man who was not a resident of the county at the election on November 5, 1878. The following is an extract from the testimony of this witness (Record, p. 128):

Q. How long had you been in Tamarack, in Kittson County, prior to November 5, 1878?—A. I had been there eleven days before election day.

Q. With how many of the eighty or ninety men in the employ of Webster & White at their wood-camp at or near Tamarack were you personally acquainted on the 5th day of November, 1878?—A. About forty of them.

Q. Do you know of your own knowledge any of the eighty or ninety men so employed at the wood-camp of Webster & White, at or near Tamarack, who had not resided in the State of Minnesota more than four months and in the election precinct more than ten days prior to November 5, 1878? If so, state who.—A. I do know, of my own knowledge, of men that were there less than ten days prior to November 5, 1878. I do not know of any person who had not been a resident of the State more than four months prior to November 5, 1878. I cannot name all the names; Mr. O'Neil, for one, Guss Avenger, James Nichols, John Morrison, Guss Glyndon; ten others, whose names I can't recall now. Those names that I mentioned and ten others I cannot call to mind are those who had not been there ten days.

Q. Do you know, of your own knowledge, whether any of the persons referred to in the preceding answer as persons who had been there less than ten days voted at the election precinct at Tamarack, November 5, 1878; and, if so, whether any of that number voted for William D. Washburn for member of Congress?—A. I don't know.

Q. Do you know, of your own knowledge, whether any of the persons on the construction train referred to in your direct examination as voting at the election precinct at Tamarack on November 5, 1878, had not resided in the State of Minnesota more than four months prior to said election, and resided in that precinct more than ten days prior thereto?—A. I do not know.

The worst that can be said in relation to the vote of Tamarack precinct, in Kittson County, is that the persons who employed some of the voters allowed them for their time while going to and returning from the polls. This act on their part the committee does not approve.

It is claimed that men were bribed to vote for Mr. Washburn at this precinct. The testimony does not sustain this claim. One G. C. Morton is relied on alone to prove this charge. Aside from some conclusions stated by this witness and given without any reliable data to base them on, his statements are purely hearsay and wholly incompetent as evidence.

There is some evidence to the effect that certain men were engaged in chopping wood for two men—Webster and White—by whom they were paid for their time while attending the election, but the evidence does not even tend to show any bribery on the part of Mr. Washburn.

The evidence shows these men were not even solicited to vote for Mr. Washburn, but were allowed to vote as they pleased. Some of these men may not have been legal voters in Tamarack precinct. There is great doubt whether, under all the circumstances, the vote of this precinct should all be counted. There was no proper ballot-box, &c. (p. 309. On the question as to whether these wood-choppers were bribed we give here the hearsay testimony of the witness Morton to show both its incompetency and unreliability (pp. 126-7) :

Q. Did you have any conversation since election with Mr. Webster in reference to any payment of money for the votes of the men employed in the wood-camp? And, if so, state what it was.—A. I have had several conversations with Mr. Webster since election; he has mentioned several times to me the fact that Mr. White had received the money for the purpose of defraying the expenses of the election, and that Mr. White had not paid him his share of it. He asked me if I thought he could sue White and collect the balance due him as his half of the proceeds. He stated that Mr. White had received for the firm Webster & White one hundred and eighty-two dollars, and that Mr. White had not paid him but sixty-three dollars, which he claimed was not all that was due him. He stated that Major Hale, of this city, Minneapolis, had given Mr. White a check for one hundred and eighty-two dollars, and that the check was cashed by George Webster, paymaster of the Minneapolis and Saint Louis Railroad Company. It is about the substance of it.

Q. Was this Major Hale Maj. W. D. Hale, who is the general manager of Mr. W. D. Washburn's business in this city?—A. Major Hale is the manager of Mr. Washburn's business in Minneapolis. I do not know his initials.

Q. Did you understand from Mr. Webster that the check for one hundred and eighty-two dollars referred to by you was paid to Webster & White by Major Hale to reimburse them for the money paid by them to their workmen who voted at that place on the 5th of November, 1878, for their time on election day during which they did not work?—A. Mr. Webster told me that this money was to defray their expenses at the time of the election at the Tamarack.

Q. Did he say what those expenses consisted of?—A. He did not.

Q. Do you know what those expenses consisted of?—A. I do not; only by hearsay.

Q. State what you heard in regard to those expenses.—A. I have heard from several men that worked there that the money was received to pay for the men's time on election day.

Q. Did you learn from any of the men at the camp who were paid for their time in what way payment was made to them?—A. The men who worked by the day or month were allowed their regular time as if they had worked steadily; and the choppers who worked by the cord were allowed one or two days' board; they have stated it in different ways.

Q. Did you get this information from the men who were so paid or allowed board?—A. I did.

The evidence of both Webster and White utterly refutes and explodes all the statements of the witness Morton as to bribery, and it shows also that so far as money was paid at all to these men for their time while voting, it was done without the knowledge of the sitting member. It also shows that the men were not even asked to vote for Washburn.

The contestant put both Webster and White on the witness stand and then proceeded at once to cross-examine them.

We first give a full extract from Webster's testimony (pp. 296-8) :

Q. Were you a member of the firm of Webster & White, wood contractors, getting out wood last fall at Tamarack, Tipton County, Minnesota?—A. I was.

Q. Did you state in a restaurant in Minneapolis, within the last thirty days, that White had received money to reimburse the firm for the money paid to their employees for the time spent in voting at Tamarack November 5, 1878, or words to that effect?—A. No, sir.

Q. Did you say that you and White had a dispute or misunderstanding about any money so paid to White?—A. Mr. White and I have had no dispute. I did not say so.

Q. Did you state at that time that you had called upon Mr. Washburn in reference to money coming to you from White?—A. No, sir; I did not know there was any money coming.

Q. Did you not say that you had made an examination at a bank in Minneapolis, and that you found there a check given to White or some other party for a sum of money in payment of the money so paid to men?—A. No, sir; not to my knowledge.

Q. Could you have said it without your knowledge?—A. No, sir.

Q. Did you not say the check was for \$250 and signed by William D. Washburn?—
A. No, sir.

Q. Did you not say, at that time and place, that you had called upon Washburn in reference to the money so paid White, and that you claimed your share of it, and did Washburn tell you that he would rather pay many times the amount of it than have the transaction exposed, and that he would or did make it right with you, or words to that effect?—A. No, sir; I am not acquainted with Washburn.

Q. Did you have such a conversation with any one else?—A. Not to my knowledge.

Q. Do you swear that you did not?—A. Yes, sir.

Q. Is Mr. Webster, the paymaster of the Minneapolis and Saint Louis Railroad Company, a relative of yours?—A. Second cousin.

Q. Did your firm pay the men who cut wood for you at Tamarack a hundred and fifty or a hundred and seventy dollars or any other sum for the time spent at the polls on election day, November 5, 1878?—A. *We simply allowed them their time to go and vote; was not cashier; that is all of my answer.*

Q. Do you pretend to say that your firm did not pay \$160 or \$170 to the men for their me at the election, and you not know of it because you were not cashier?—A. Certainly, if you ask a man to vote, and he says he won't vote unless he is allowed for his time, we have a right to pay him for it. *I agree to pay them, if they would go and act according to their own taste, for their time. I don't care how anybody votes.*

Q. Are you so fond of seeing men vote that you are willing to pay \$160 or \$170 for the mere luxury of knowing that they vote, without regard for whom they vote?—

A. Mr. White told me it was simply allowing them their time for that day, and that he (White) could get enough money to balance the money expended for the time they spent in going to the election, as they did not want to go unless they got as much as they could in chopping wood.

Q. Who did White tell you he was to get the money from to balance the money so expended?—A. He did not tell me, nor I did not ask him.

Q. Did he ever tell you that he had got the money?—A. No, sir; I did not know what he did receive. I do not know what he received, only what I saw in the paper and his testimony.

Q. Do you pretend to say that \$160 or \$170 or any other large sum could have been taken out of the money of the firm to pay voters and you not know three months after the transaction whether the firm had been repaid or not?—A. I presume it could as long as he paid the bills. Mr. White and I have not settled yet on our wood contract. *We have been very busy and have not had time to settle our wood contract.*

Q. Have you had any conversation with any one at any time with reference to the payment of the money so paid by the firm to the wood-choppers for their time on election day?—A. I had all I could do election day to attend to my business as judge of election, and did it to the best of my ability for both parties. Not that I know of.

Cross-examined:

Q. Did you pay anything for votes on the election day at Tamarack, November 5, 1878, or did Webster & White pay anything for votes on said day at said place, or did you simply allow the men their time to go to the polls and vote for either Mr. Donnelly or Mr. Washburn for member of Congress as they saw fit?—A. We simply allowed them their time to go to the polls *and use their own judgment in voting.*

Q. Did you try to influence the men in your employ at Tamarack to vote for William Washburn for member of Congress at said election held at Tamarack November 5, 1878?—A. No, sir.

Q. Did you ask one Morton, then in your employ, to use his influence with the men for Washburn?—A. No, sir; not to my knowledge.

Q. Do you know of any money being paid or promised by William D. Washburn, his agents or any person or persons acting for him, with his knowledge, to any person or persons for his or their vote or votes or influence for William D. Washburn for member of Congress from the third Congressional district of Minnesota, at or prior to the election held November 5, 1878?—A. No, sir; not to my knowledge.

Redirect examination:

Q. Who were you in favor of for Congress last fall?—A. As I was always a Republican, I voted that way last fall.

Q. Were not most of your wood-choppers cutting wood by the cord at \$1.10 per cord?—A. Yes.

Q. Was not their time their own?—A. It was; but I told them if they would go and vote as they saw fit I would allow them their time, as they would not go without it.

Q. How could you allow them their time when their time was their own, as they were not hired by the day or month?—A. If they had not went to the polls they could have cut a cord and a half of wood, which would have amounted to \$1.50, so we allowed them the same; did not care who they voted for.



Q. About how many of them voted?—A. I judge about 50 or 60 voted; there might have been more or less.

Q. Then you paid for about 75 cords of wood which you never got?—A. I did not say so.

Q. You said that White told you that he could get enough money to balance the money paid for the men's time in voting. If the men had all voted for Donnelly would he have got the money?—A. Yes, sir.

Q. Who would have paid it?—A. I should have paid it, and calculated that you, Donnelly, would have made it good.

Q. But as the votes were all but one for Washburn, did you calculate that Washburn would make it good?—A. No, sir; the other answer was said in joke.

Here are also full extracts from the testimony of the witness White, of the firm of Webster & White (pages 306, 307, 308, 309, 310):

Q. Was an election held at Tamarack on the 5th of November, 1878, for Congressman and State and county ticket?—A. There was an election held for State officers and Congressman, but no county officer, I think. The county was unorganized at that time.

Q. Did you vote at that election there?—A. Yes, sir. I decline to say for whom I voted.

Q. Did any of the men in your employment vote at that election; and, if so, how many?—A. Yes, sir; I guess all the legal voters voted; cannot tell exactly how many.

Q. Did a majority of your men vote there?—A. Yes, sir.

Q. Did two-thirds of them vote?—A. I should judge, may be, more than two-thirds of them voted.

Q. Were the men paid for the time consumed in voting?—A. They were allowed their time. Most of the men said they would like to go and vote; didn't feel able to lose the time. Most of them were earning good wages. I told them to go and vote and I would allow them their time.

Q. Do you mean that you would allow them pay for the time spent at the polls the same as if they had been working for you all the time?—A. Do not know that I told them that; I told them I would allow them their time.

Q. Did you, in settling with them, pay them for the time they were absent from work on that 5th day of November, 1878?—A. I didn't settle with them; I had a bookkeeper for that purpose.

Q. Was anything deducted from the pay of the men who worked by the day or the month on account of absence at the election that day?—A. No, sir.

Q. In settling with the men who cut wood by the cord, was not an allowance made on their bill for board of the time spent at election that day?—A. I do not know.

Q. Were you present when any of the men were settled with?—A. Yes, sir.

Q. Do you not then know that the wood-choppers who chopped by the cord were allowed one or two days' board for the time spent at the election?—A. No, sir.

Q. Do you swear that such an allowance or some other allowance was not made to those men?—A. I said before they were allowed their time. Most of them were working by the cord, a few by the month—a very few.

Q. If each man was to receive so much for each cord of wood cut, whether he cut ten cords or one hundred, was not his time his own, and what do you mean when you say you allowed him his time?—A. I mean they said they wanted to go and vote, but they could not lose the time; that in all probability, during the time spent in going to, staying at the polls, and returning, they might have cut a cord and a half or two cords of wood.

Q. How much were you paying them for cutting wood by the cord?—A. One dollar and ten cents per cord.

Q. Then you paid these men for a cord, a cord and a half, or two cords that they never cut for you?—A. Don't know as we allowed them any such thing as that; I think we allowed them about what they could have cut in a day.

Q. What was the gross sum that you paid or allowed in this way?—A. I don't know; I think \$160 or \$170.

Q. Has that money been repaid to you?—A. Yes, sir.

Q. Who by?—A. By a man named George B. Webster, who gave me a check on the bank; think it was the First National, of Minneapolis.

Q. What was the amount of that check?—A. It was either \$168 or \$172.

Q. Who is this Mr. Webster?—A. The paymaster of the Minneapolis and Saint Louis Railroad.

Q. Who is the president of that road?—A. W. D. Washburn.

Q. How did the paymaster of the Minneapolis and Saint Louis road happen to pay you for wood cut, or the time of your employes, under a contract for the Saint Paul and Pacific Road?—A. Well, I will tell; he was a friend of mine, and I went to him, asked him if he could let me have \$168 or \$172, or loan me that amount. He took out

his little bank-book, said he had just about that amount in the bank, and, if it would accommodate me, he would let me have it. *It was his individual check.*

Q. Have you ever repaid him that amount?—A. No, sir.

Q. Did you give him your promissory note for that amount at the time he gave you the check?—A. No, sir.

Q. Whose name was to the check you received for that money?—A. George B. or G. B. Webster; can't tell exactly when it was given. Quite confident it was after election; might have been eight or ten days after election.

Cross-examined by F. HOOKER, Esq., on behalf of contestee:

Q. *Was there anything said to the men by yourself at the camp that tended in any way to unduly influence those men to cast their votes for either W. D. Washburn or Ignatius Donnelly for member of Congress at the election held at Tamarack, November 5, 1878?*—A. No, sir; some of the men said they would like to go and vote. Some of the men asked me if I had any choice; I said I was friendly to Mr. Washburn; that they could vote for either Mr. Donnelly or Mr. Washburn as they saw fit. This was in substance all I said to the men about voting for either Mr. Washburn or Mr. Donnelly. When they came to count the votes I was much surprised to find that Mr. Donnelly had no more votes. *I did not know which way the vote would go. I did not know but Mr. Donnelly would get 40 or 50 or 60 votes. Didn't ask any one how they would vote.* I suppose there was an opportunity for all to get tickets. There were several settlers in that vicinity. Everything was quiet and orderly at the polls. The polls were open at exactly nine and closed at five. No person voted at that precinct who was not known to the judges to be residents of the precinct. In Morton's testimony he mentioned the names of Nichols and Morrison as illegal voters or from Canada. I know they did not vote. They said to me that they thought they had no right to vote, and I told them not to vote if they thought they were not legal voters.

Q. How long had you known General Washburn?—A. Seven or eight months; was ordinarily friendly to him. He always treats me respectfully, and I also treat him so.

Q. Did you go to Morton to get him to use his influence with the men to vote for Mr. Washburn for Congress at said election?—A. No, sir; I did not. I was on no more intimate terms with Morton than I was with the other men.

Q. Do you know of your own knowledge of any money paid or promised to be paid, reward offered or promised, or any valuable consideration whatever given or promised by Wm. D. Washburn, or any person or persons acting for him with his knowledge, to any person or persons in order to influence such person or persons to vote for or use his or their influence to cause other persons to vote for Wm. D. Washburn at the late election held November 5, 1878?—A. No, sir.

Recross-examination:

Q. Did you say anything to Morton about this money transaction that has been talked about?—A. Never, to the best of my memory.

Redirect:

Q. Did Webster tell Morton in your presence that Webster & White would make more money looking after the election than they would at cutting wood, or words to that effect?—A. I think not, sir; I don't know what he told Morton, but he did not say it in my presence. I never told Morton any such thing.

The testimony does not show that Webster & White paid these wood-choppers for their time under any arrangement with Washburn or any of his friends. The most that can be said is that one George B. Webster, a relative of the Webster of the firm of Webster & White (p. 296), consented *after the election* to reimburse Webster for the money he had paid these men for their time on election day while attending the polls and voting.

He only adopted the act after the election by giving his individual check for the sum paid (page 307). If Mr. Washburn had himself done this (which he did not), he would not, have been guilty of bribery, even though it could be said the men were bribed to vote for him.

The testimony does not show, as has been claimed, that money was paid from the funds of the Minneapolis and Saint Louis Railroad Company; nor does it show who, if any person, reimbursed George B. Webster. The most that can be said is that G. B. Webster may have paid this money from a campaign fund raised by the district committee. We are not called on to approve of the act of Webster & White in prom-

ising and subsequently paying these wood-choppers for their time on election day while they were not at work. The policy of such an act is strongly condemned, although it is often adopted. As in this case, the voters who are laboring men often demand to be paid for their time regardless of their politics.

Some significance is given to the fact that in Tamarack precinct Donnelly only received one vote. It was not the only precinct where the voters about all voted one way. Mr. Donnelly claims to have received all the votes, 61, cast in Leaf Valley precinct, Douglas County, page 270, and a portion of the committee (although no return was made of these votes) has agreed to count them for him. For other precincts where the vote was almost unanimously for Donnelly, see pages 260 and 261 of record. Had the voters in Tamarack precinct been bribed to vote for Washburn that fact could certainly have been proved by competent testimony.

As the rejection of the entire vote of this precinct cannot affect the result in this case, it is not thought necessary to do anything more than consider the testimony with reference to the contestee's complicity with any alleged bribery. It is not necessary to invoke the application of the rule that *bribery must be proved, not presumed*, to completely exonerate him from such a charge in this as well as all other alleged cases.

The witness Emil Shagren is relied upon very much to prove bribery in this case. It does appear from the testimony of Emil Shagren that one Mr. Hale, a friend of Mr. Washburn, had one or two interviews with this witness, during which he tried to persuade him to support Mr. Washburn. But this witness, when in need of money, received five dollars from Mr. Hale, according to his own confession, and afterwards supported Mr. Donnelly. This money, if paid to him at all, was on account of expenses that Mr. Shagren would be required to incur while engaged in using his influence with his friends for the election of Mr. Washburn. In the course of the alleged conversation with Mr. Hale it is claimed that Hale proposed to bribe Mr. Shagren and induce him to turn from his support of Mr. Donnelly to the support of Mr. Washburn. But a careful reading of the testimony will show that this even is not true. Shagren says in his testimony (page 15) that Mr. Hale said to him, "Is it greenbacks you want? I am told you are a delegate to the Greenback convention, and that you are a Donnelly man." A further reading of the testimony will show that Mr. Hale could have referred, when he used this language, to nothing more than the politics of the witness. Mr. Donnelly was running as a Greenback candidate. Aside from the fact that Shagren confesses that he was willing to be bribed to support one man while he treacherously supported another, this witness is shown to be entirely unworthy of credit. He is directly impeached by at least three witnesses called by the contestant. He testifies (pages 16 and 17) positively that Ole Mahler told him at Harmonia Hall that he could get twenty-five dollars to vote for Washburn and to use his influence for him; that Sevit Mahler told him he was paid to vote for Washburn; that John Oleson told him he got two dollars to vote for Washburn and to use his influence for him; and that Daniel Getchel had received money to vote for Washburn. Ole Mahler was called by contestant as a witness, and swears (pp. 116, 119) that he was a supporter of Donnelly, and also that he never stated to Emil Shagren that he had been paid money, or other valuable consideration, for his vote; that he attended the polls to look after the interests of some of his friends, candidates for county offices, and that he did not ask anybody

at the polls to vote for Washburn. Ole Mahler says in his testimony (page 119):

I have read a piece in the Pioneer Press, giving the statement of Mr. Shagren of my meeting him at Harmonia Hall the eleventh day of November last, and that I told him that I had \$25 from Washburn. I deny every word of it. I was not at Harmonia Hall.

John C. Oleson directly impeaches Shagren in the most positive terms. On this point his testimony is given in full (page 87):

Q. Do you know Emil Shagren?—A. Yes, sir.

Q. Please state if you had a conversation with Emil Shagren at Morrison Brothers' lumber-yard, or at any other place, on or about November 7 last, and stated to Shagren that you had received money to cast your vote for Mr. Washburn at the last Congressional election.

(Objected to as irrelevant and immaterial, and as not addressed to any specific charge in the notice of contest.)

A. I never had anything to do with Mr. Shagren about election matters, and I had no such conversation with him.

Q. Did you not state to Mr. Shagren that Chase paid you two dollars to vote for Washburn?—A. I did not.

Q. Now, please state whether you were paid any money by any one in consideration that you cast your vote for Mr. Washburn and use your influence in his behalf at the last election.—A. I was never promised any money from any party; I was never paid any money by any one.

Q. Did you not go to Mr. Chase after election and ask him for more money, stating that you had not received as much as the rest of the boys?—A. I did not.

Q. Did you not state to Emil Shagren that you had demanded more money of Chase, and that Chase had answered that if he paid you any more that he would have to pay it out of his own pocket?—A. No, sir; I never had any conversation with Mr. Shagren about it.

Daniel Getchel also directly impeaches the witness Shagren (pages 86-87):

Q. How long have you belonged to that party (Democratic)?—A. Since the election of Mr. Tilden.

Q. Do you know Mr. Emil Shagren?—A. Yes.

Q. Please state whether at any time you stated to Emil Shagren that you had received money from any party or parties for your vote at this last Congressional election, or for your influence or services, from any party.—A. I did not make any such statements to Mr. Shagren.

Q. What did you state?—A. I object, and decline to answer.

Q. Please state whether you have received any money from any party at this last Congressional election—from any party for your vote, or services, or influence.—A. I decline to answer that question.

Q. Will you state whether you have received any money from W. D. Washburn, or from any party acting in his behalf, with the understanding and agreement that you should cast your vote for W. D. Washburn for Congress?—A. I received no money from Mr. Washburn, nor from any of his friends, direct or indirectly. That Mr. Washburn, nor any of his friends, never approached me nor came to me to ask me to vote for him or use my influence, and I would not have voted for him if he had. I voted for Mr. Donnelly and used all my influence for him.

Q. Please state whether or not you did say to Shagren that you was paid to vote for Washburn, and that you had voted for Washburn.—A. I did not state any such a thing.

Q. Please state whether you know of any other parties who have received money to vote for Mr. Washburn.—A. I do not know. I have no knowledge whatever.

Cross-examination:

Q. Do you know of any voters receiving any money, promise of office, or other reward for voting for Mr. Donnelly at the last election for member of Congress?—A. I have no knowledge of anything of the kind, sir.

It is thus made to appear by three witnesses that Shagren is a willful perjurer. It is proper to observe here that with the exception of the witnesses Mahler, Olesen, and Getchel, whose testimony is referred to above, the contestant has failed to call persons who would know the facts in relation to the alleged bribery, but he has generally relied upon

getting persons who had their pretended information second or third hand, and in most instances were persons whose testimony was of a very doubtful character, and who had some grievance.

The testimony of Bernard Cloutier (pages 211-213) is relied upon to prove his bribery. It appears from this witness's testimony that he was in the market as a worker at the polls, and was somewhat disgusted because in the past he claimed to have been promised a good deal of money for his work, but had never got anything for it. He, however, states that he did receive from one Charles W. Johnson, who was in some way connected with the Republican district committee, some money for his influence and work. He says he was to go out in the country and electioneer for Washburn and the rest of the Republican ticket. He also says he was induced to do some work for one John Baxter, who was a candidate for the legislature. He further says: "I wanted him to give me money enough to pay my expenses, to furnish a team, and pay for my team. He told me all right; to go and hunt up a team, and start out the next morning." And he distinctly says that he told Baxter that Washburn was his candidate, and this before he was employed to do any work in the election for any candidate. The following is an extract from his testimony:

Mr. Johnson, as I understood, was secretary of the Republican district committee. I think I have given all of the conversation between Johnson and myself, or Washburn and myself, in reference to my services in that campaign. There was no money or other consideration offered to me or received by me for my vote for Mr. Washburn or anybody else.

My choice as between Mr. Washburn and Mr. Donnelly prior to any negotiations for my services was for Mr. Washburn. I knew Mr. Washburn, and did not know Mr. Donnelly. I was not authorized or requested to use any part of this money to secure votes for Mr. Washburn in any way, except to pay my expenses and time. I do not know of any money or other valuable thing being paid, or any promises made by Mr. Washburn or any person in his behalf, to any voter to influence his vote in his favor at said election.

The report of a portion of the committee in two places finds by the testimony of this witness alone that he was paid \$20 by Charles W. Johnson in Mr. Washburn's office, *in his presence*. We are content to say that there is not a syllable of evidence in the entire record which even tends to prove that this is true. On the contrary, the witness Cloutier, in express terms, states (p. 212) that it was paid to him by Johnson in the absence of Mr. Washburn. There is nothing in his testimony which tends in any sense to show an attempt to bribe him, or to employ him to bribe others, to vote for Mr. Washburn.

Members of the committee, having referred to the testimony of Charles Berens, George C. Morton, Emil Shagren, and Bernard Cloutier, then proceed to lay down the proposition that, as a matter of law, Mr. Washburn must be held to have been guilty of bribery because he failed to rebut their testimony, regardless of the fact that when the testimony is examined it does not show Mr. Washburn to have himself, or through any authorized agent, paid or promised a single cent of money to any person. There is no rule of law which requires a party charged with an offense, which is not proved, to himself enter upon a defense; nor is it true that, in the trial of a case where a crime is charged, any presumption arises against the party charged because he does not prove himself innocent, or merely because he is charged with the offense. The rule of law is universal, that a man must be proved to be guilty by competent evidence upon the trial. There can be no presumptions against the party charged simply because he furnishes no evidence on the trial. The exigencies of the contestant's case may be the excuse for undertaking to enunciate any such anomalous and absurd proposition of

law. The astonishment is that the proposition should find supporters in the committee.

It is claimed that in Crookston precinct, in Polk County, there were a large number of illegal votes cast by parties that worked upon the construction of a railroad who were not inhabitants of that precinct and had no right to vote there. This claim is chiefly based upon the alleged fact that the vote of this precinct was too large. The whole vote of the precinct was 258 as returned. The county of Polk lies on the Red River of the North, and extends along it for over sixty miles, and Red Lake River passes directly through it in an east and west direction. The Saint Paul, Minneapolis and Manitoba Railroad passes through its entire length, north and south, over sixty miles. Crookston is its chief city, being at the crossing of the railroad with Red Lake River. Now, it must be borne in mind that a residence may be acquired in a county in ten days for the purpose of an election, provided the voter has resided in the State long enough to become a resident and naturalized citizen. That county, for a year or more previous to the fall election of 1878, swarmed with immigrants and land hunters. At the governor's election in 1877 there was polled in that county 257 votes, of which 238 were for Pillsbury, Republican, and 19 for Banning, Democrat. From 1877 to 1878 there was an increase of voters in that county much less than might have been anticipated. The contestant does not attack any precinct of Polk County except Crookston, and upon this point he swears four witnesses—Johnson (page 190), Sampson (page 232), Myer (page 238), and Church (page 223). It is impossible to give a detailed analysis of the testimony of these witnesses in a report.

Johnson's testimony shows that every voter of whom he speaks had a clear right to vote. He speaks of a number of persons as "Thompson's crew," but he said that they had all been in the district two or three weeks or a month before the election. Some were old settlers and some had been there several years, others for only two or three months. On cross-examination this witness shows that he knows very little about the matter, except what he has been told by others, chiefly since the election.

The witness Sampson undertakes to give a census of Crookston, but before he gets through it clearly appears that he knows little about the total number of voters in the precinct. After this witness has given a census, as far as he can, of the resident voters of Crookston, he says:

There are two or three shanties in the village, but I do not know the people. I could not swear but there might be a few more; could not be many, as I am well acquainted there. If there are more I have not seen them; they may be out in one corner, but I have not seen the houses. I forgot to state that Hitchcock & Brother runs some big farms on the northern part of the township. I could not state whether they were voters or not.

He further says:

I know the farmers, and I know the country. I do not know the steamboat men, the men who are coming and going.

And on the question as to whether any illegal votes were polled, when asked the question, "Did you see any railroad workingmen vote at that poll at that time?" he says: "No; I was not up at the house." He does say that a minister of the gospel who preached in another town voted in Crookston. To show the utter unreliability of the witness Sampson, an extract from his testimony is here given. The only apology for giving this is found in the fact that some of the committee lay great stress upon this witness's knowledge of the voters of Crookston precinct,

and rely upon it to conclusively show that there was a large number of illegal votes cast at the election of 1878:

Q. Who came into this county in the month of August last as settlers?—A. I never stated that I knew all the farmers in the county; I know the most of them.

Q. Who came into the township of Fisher during the months of August, September, and October 26, 1878?—A. That is one thing I have kept no record of. No, I keep no record.

Q. Who came into the village of Crookston during the months of August, September, and up to October 26, 1878, to make this their home?—A. I have kept no record; some of those I named came during that time. I know that a saloon-keeper down at Box's place, he began last fall pretty late; Kistenmacher and his partner started late last fall. I know Kretzsetmar started some time in August some time. That harness man, he put his shop up in the middle of the summer; also Colter builded last summer.

Q. Do you swear that you stated the names of all the male adult residents of the village of Crookston who resided there more than ten days before November 5, 1878?—A. No, I do not. I told you that there might be a few more.

Q. How many boarders had Mr. Box of male persons over 21 years of age who had resided in the village of Crookston more than ten days prior to the election, whose names you have not stated?—A. I could not say that.

Q. May he not have had quite a number?—A. For all I know; I keep no record.

Q. How many men over 21 years of age who had resided in the village of Crookston more than ten days prior to the election held November 5, 1878, boarding at the Sherman House, whose names you have not stated?—A. That is one thing no man could state. There were people coming and going every day.

Q. May there not have been quite a large number?—A. May have been a good many.

Q. Were there not quite a number of private boarding-houses in the village of Crookston during the fall of 1878, and at and prior to the election held November 5, 1878?—A. There was some people stopping, coming and going. Some regular boarders, I should think, at these private boarding-houses.

Q. Were there not men of the age of 21 years who had resided in the village of Crookston more than ten days prior to the election held November 5, 1878, whose names you have not stated, who were boarding at those private boarding-houses at that time?—A. I don't know if there were, and couldn't say if there was any people coming and going. The boarding-houses were full sometimes.

Q. May there not have been quite a large number of such men, whose names you have not given?—A. I can't state that.

Q. Were there not quite a large number of single men in this locality of the age of 21 years who had resided in the village or township of Crookston more than ten days prior to the election held November 5, 1878?—A. I could not state that. There may have been.

Q. How many children are there in the public school in the village of Crookston?—A. What I have learned from the Crookston paper and School Superintendent Stevenson, 120 scholars. The district includes four towns. I know there are children there from other townships.

Myer's testimony has reference only to a conversation with one W. B. Moore, whom he imagined was an illegal voter, and whom he stated told him he was not a naturalized citizen. On this he founded a theory in his own mind that fraud had been committed. This witness started on the mission of finding out whether Mr. Moore was a naturalized citizen or not, and succeeded in finding the record, which satisfied him that he was. This is an illustration of the unreliability of loose statements made by persons after an election. They are often made merely to badger and annoy and excite the curiosity of some over-officious man, such as doubtless Myers and other of the witnesses called in this case were. The other witness, Church, recites some conversations, and undertakes to give some conclusions about the number of legal voters in Crookston precinct, but when he is fully examined he makes clear two things only: 1st. That he has no good data upon which to base any of his statements; 2d. That he was a disappointed candidate for sheriff at that election, who tried very hard to induce all these voters, whom he now claims were illegal voters, to vote for him, but failed.

Members of the committee, however, hold that many persons who

voted in Polk County ought to be regarded as illegal voters because they worked on a railroad fourteen miles from the voting precinct, and not because they resided outside of it; and for the further reason that the railroad company for whom they worked transported them to the polling place in a railroad car.

It is proper to observe here, again, that during the short time a portion of these voters were going to and returning from their voting place their employers paid them for their time; and it may be observed, also, that in some of the newly constituted voting places, ballot-boxes, such as were required by the letter of the law, were not provided. An improvised candle box was used at one place, and a cigar box at another. But there is no law which requires the rejection of the votes cast in such receptacles, in the absence of a whisper, or pretense of proof, that the contents of the boxes were tampered with. No such charge is made by the contestant, in his notice, with reference to any of the precincts in the Congressional district, and there is no proof to sustain any such claim. Experienced persons on the frontier know that people there have to put up with what they can get. But the contestant desires to disfranchise a large number of these hardy pioneers because of their poverty and their inability to provide themselves with the usual and ordinary facilities for exercising the elective franchise.

It is not proposed only in a few instances to review the cases where it is alleged that individuals were bribed by Mr. Washburn or his friends. We have sufficiently shown that Mr. Washburn, personally, had nothing to do with bribing any voter, nor did he authorize any person to bribe voters for him. It may be admitted that some persons were employed by members of the Republican party, and by friends of Mr. Washburn, to work at the polls and to induce the voters to turn out on election day. Certain members of the committee claim that about 22 persons were bribed to vote for Mr. Washburn. The testimony does not disclose in but few cases who these 22 persons voted for, or that they voted at all.

Oluf Larson is the first one. He resided in the city of Saint Paul. He says in his own testimony, in express terms, that he did not receive any money or other valuable consideration for the purpose of securing his vote or his influence at the polls on behalf of Washburn at that election. He does say that he was paid ten dollars to peddle tickets for Mr. Washburn and for his time while doing so. He expressly states that he was not requested to use his influence for Mr. Washburn, and he also states that he used no part of this money to bribe any one to get votes for anybody. He further says that he was a Republican, and voted for Washburn (page 28).

Abraham Werrick, another one of the alleged bribed voters, makes clear by his testimony that he was a supporter of Washburn, and that he received no money to vote for him (page 29).

William M. Leyde, another alleged bribed voter, says he took part in the general campaign in behalf of the Republican ticket; that he supported Washburn; and that he received no money from Mr. Washburn for anything he did. It is true this witness says he received money to canvass a portion of his county. This witness was a Republican (page 489).

C. Heyer, another alleged bribed voter for Washburn, did do some work in the general canvass, but he was not engaged to participate specially in the election until after he had declared, in most emphatic terms, when asked, whether he would vote for Donnelly, that he would not, and that he would not vote for a Greenback man; and, also, that

he would support Mr. Washburn against Mr. Donnelly. In the work that this man did he says he simply peddled tickets, and that he did not request or persuade any one to vote for Mr. Washburn (page 55). This person also received five dollars from a man by the name of Castle, a Democratic candidate for senator, for work on election day (pages 56, 57).

It is charged that John C. Oleson was also bribed. This charge rests upon the testimony of Emil Shagren, already shown to be directly impeached and to be unworthy of credit by at least three witnesses. Oleson, himself, says in most emphatic terms that he was never promised any money from any party, and was never paid any money by any one to take part in the election (pages 87-92).

A man by the name of Shack is also alleged to have been bribed to vote for Washburn. This allegation rests upon the testimony of the witness Rogers, which is wholly and entirely hearsay. Shack was not called. Rogers does not undertake to give the language of Mr. Shack, but only arrives at a conclusion that Mr. Shack, an editor of a paper in Minneapolis, turned from the support of Mr. Donnelly to that of Mr. Washburn, because the Democrats had never helped him in his newspaper enterprise (page 89). Shack in the public prints denies the whole of Rogers's testimony.

Karl Findler is claimed to have been bribed. An examination of the testimony relating to his alleged bribery furnishes us a key to a vast amount of the absurd claims made in this case. A witness, Guertin, undertakes to state that this man Findler sold his vote for a sack of flour. It turns out that Guertin was one of those unsophisticated but would-be knowing men who nosed about and was rewarded by being made a fool of by all sorts of people, who imposed on his credulity by telling stories which they thought were suitable to his fancy. Guertin does say (page 95) that Findler made a passive admission that he had obtained a sack of flour from Mr. Washburn's mill to vote for him. This witness says that he had a talk with Findler, who was a German and spoke the English language imperfectly, in the presence of a man by the name of Martin Graham. He says the conversation started between Findler and Graham, and in a joke; that Mr. Findler's reply to a question of Graham's "was child-like and innocent, without evasion" (page 95). This man Graham also testifies in this case that Karl Findler said something to him about "a hundred of flour," and then he says that he knows himself that this conversation that Mr. Guertin heard was all a joke, and he further knows the fact that Findler made a statement about the flour just to aggravate Guertin and see him blow about it, and that in fact Mr. Findler got no flour. The following is a portion of Graham's testimony:

Q. Will you state now whether, from the character of the conversation and the man's manners when he said that he got the hundred of flour for voting, you thought he was in earnest?—A. I did not.

Q. Was it in a joking conversation?—A. I believe it was.

Q. Do you and that man work together, and are you on friendly terms?—A. We have worked together for a month past, and we are friends. I have voted for Mr. Donnelly. Mr. Guertin was present and standing by at the time that Karl Findler made the statement about the flour.

Q. Do you consider it a joking matter to have a man confess bribery?—A. He just said it to aggravate Guertin, because he knew that Guertin would blow about it, and I know that he never got a grain of flour.

Q. How do you know that he never got any of that flour?—A. I am certain of it.

Q. How are you certain that he did not get it?—A. Because I know that he did not get it.

Sevit Mahla, of Minneapolis, is mentioned as another of the bribed

roters. The only testimony to support this mention is that of the witness Emil Shagren, on the character of which we need make no further comment (page 16).

Louis Kundsén is said to have been bribed, or to have received \$5 to work all day at the polls, but this money was not received from Mr. Washburn, but from his employers, Bernard & Cope, who paid it to him as wages. He was not required to work specially at the polls for Mr. Washburn, but simply to peddle tickets (pages 162-3).

Mr. Bernard, who paid Kundsén, said nothing to him about working for any particular man on the ticket (page 163-4). The witness said he did not try to influence any man's vote at that election (page 164). This man Kundsén in his testimony expressly says that he would have voted for Mr. Washburn if he had not been employed at the polls. His testimony also explodes much of the theory of contestant on the subject of bribed voters, notwithstanding the fact that several persons were employed to work at the polls on election day. Here is an extract from his testimony (page 163):

Q. Do you mean to say that you sold your vote at the election of November 5, 1878?—A. No.

Q. Would you have voted just as you did without being paid for it?—A. Yes, sir.

Q. Do you know of any money having been paid for votes before or at the November election, 1878, by Mr. Washburn or any person acting for him with his knowledge or consent?—A. No.

Q. Do you know of any promise having been made or reward offered to any person or his vote by Mr. Washburn or any person authorized by him?—A. No.

Q. Do you know of any vote having been cast for Mr. Washburn at the election November 5, 1878, which was paid for by Mr. Washburn or any person authorized by him?—A. No.

Louis Paulson is said to have been bribed to vote for Mr. Washburn. The testimony does not support this claim in any degree. There is some highly unsatisfactory testimony offered to show this man was paid \$5 not by contestee or by his agent or special friends) to peddle tickets at the polls (page 164).

All that has been said in relation to Louis Kundsén will apply to Louis Paulson (pages 161-4).

W. R. Metcalf, alleged to have been bribed to vote for the sitting member, makes very clear by his testimony that he was not engaged before or on election day in the interest of either Washburn or Donnelly, and that he did not do any work in the interest of Mr. Washburn. He did handle tickets, but for other candidates. He was not a partisan of either Washburn or Donnelly; neither of them was his choice. He was a Republican and was employed by certain candidates who were running for State and county offices. He was employed to get out the vote in his precinct by providing means of transportation for voters who had no teams (pages 183-5).

Peter Quady it is pretended was bribed in Washburn's interest. This the witness expressly denies, and says that he did not "receive any money between Washburn and Donnelly" (page 201). He says he did not urge any person to vote for Washburn for Congress. The witness Quady declined to state who paid him money to work at the polls, but he repudiates the charge that he received any money, or promise of money, "between Donnelly and Washburn," from anybody.

Louis N. Gayner, said to have been bribed by Washburn, or his friends, also says that he received no money for his vote, influence, or services, at or before the election, from Mr. Washburn, or any person acting for him or in his behalf. He declines, when on the witness stand, to state for whom he voted. He does say on cross-examination that his

opinion was in favor of Washburn, but that the interest he took in the election was not on his account, but on account of some other person (pages 206-7).

Peter Engberg, who was alleged to have been bribed, says, also, that he was employed for some of the local candidates, but that he took no interest in the election of Washburn further than the majority of voters in Minneapolis. He expressly says that he received no money from Mr. Washburn, Major Hale, or Charles W. Johnson. He also says that he had no financial or private interest in the election of Washburn; that he was promised nothing and offered nothing for his services, influence, or anything connected with Washburn's election; and he further says that he knows of no vote, or services, or influence for Mr. Washburn that was secured by him, or any person for him, by the payment or promise of any money, or other valuable thing. He testifies that he was employed to do nothing in connection with the election, except to get out a full vote in favor of the Republican ticket (pages 207-209).

Bernard Cloutier (pages 211-213), who is one of the persons supposed to have been bribed, says, in his testimony, he received some money from Charles W. Johnson for his influence and work at two different times, and that he was to go out in the country and electioneer for Washburn and the rest of the Republican ticket. This service he performed. And then he says:

There was no money or other consideration offered to me or received by me for my vote for Mr. Washburn or anybody else. My choice as between Mr. Donnelly and Mr. Washburn prior to any negotiations for my services was for Mr. Washburn. I knew Mr. Washburn, and did not know Mr. Donnelly. I was not authorized or requested to use any part of this money to secure votes for Mr. Washburn in any way, except to pay my expenses and time. I do not know of any money or valuable thing being paid, or any promises made by Mr. Washburn, or any person in his behalf, to any voter to influence his vote in his favor at said election (page 213).

Tollef G. Fladeland, said to have been bribed, admits in his testimony that he received money to go to North Fork and Crow Lake Townships to see some parties who had not been seen, and leave some tickets. He says, using his own language: "I was a Washburn man in politics at the time Searle and Cooper called on me." He had formerly been a Democrat, he says, but not recently. The contestant here turned aside from his contest and desired this Scandinavian to settle the question which recently agitated the whole country, to wit: Who was elected President of the United States, Hayes or Tilden? The witness was in doubt, and refused to swear that either Hayes or Tilden was elected. (pages 221-22.) The testimony of Cooper shows Mr. Fladeland received money to pay his livery bill, &c., from Searle and Cooper, which was never repaid or expected to be repaid to them (pages 256-7).

J. V. Brower, a lawyer residing at St. Cloud, Minnesota, and registrar of the United States land-office at that place, is claimed to have been bribed to vote for Washburn. He is one of the twenty-two whose names are given in a list of bribed voters. His testimony discloses the fact that he was a Republican and a warm supporter of Mr. Washburn. He paid for some cigars in his electioneering for Washburn. It does not appear that this man Brower ever received any money, himself, for his services (pages 244, &c.).

The claim that A. J. Clark was bribed needs little or no comment.

He is claimed to have been bribed to vote for Washburn. It does not appear for whom he voted, or even that he voted at all for Congressman in 1878. The same may be said of others of the alleged bribed voters.

The testimony of one Nathan Richardson is relied on to prove Clark's bribery (pages 285-9). No money is shown to have been paid him at all, and no agreement to pay him money is shown to have been made (page 286). Richardson, on the contrary, says no money was paid any person by Washburn or his agent to influence votes.

Here is an abstract from his testimony :

Question. Do you, of your own knowledge, know of any money paid or promised, any reward offered or promised, or any valuable consideration whatever given or promised by William D. Washburn, or his agents or any person or persons acting for him, with his consent or knowledge, to any person or persons in the third Congressional district of the State of Minnesota for his or their votes or influence for William D. Washburn for member of Congress at the last general election, held November 5, 1878?—Answer. No, sir; I have no knowledge of any money being paid or any reward offered or any valuable consideration given or promised to any person or persons for their vote or influence for W. D. Washburn.

Q. Do you know of your own knowledge of any money being used at said election by William D. Washburn or his agents, with his consent or under his direction, to induce voters to corruptly vote for William D. Washburn at said election held November 5, 1878, who would otherwise have voted for Ignatius Donnelly?—A. Not that I know of. I do not know of anybody using money for any such purposes.

The letter referred to in the testimony by Richardson was never sent or intended to be sent by him to any person. He says of that letter (page 290) :

Q. Did you send the letter offered in evidence and marked Exhibit A., E. D. L. to Mr. L. Fletcher, of Minneapolis?—A. No; I did not send it to him or anybody else.

Redirect examination :

Q. Was that letter lost by you before it was mailed?—A. I think I never intended to mail it; it was not lost before it was mailed; it was not mailed by me; I don't know that it was by anybody.

The letter itself (page 285) does not refer to the matter of bribing voters or to bribery in any form; it only speaks of money to be used in aiding Clark to publish his paper, in which he was already opposing Donnelly.

Mr. Buss, of Long Prairie, is alleged to have been bribed to vote for Washburn. In the light of the evidence this charge descends to the ridiculous. One Milo Porter testifies that Buss was a Republican, the treasurer of Todd County, and an ardent supporter of Washburn throughout (page 293). He also says Buss, in a public place and in the presence of a number of persons, offered him \$50 to support Washburn (page 293). The whole talk between Buss and Porter was of such a character as to make it clear that Buss was only joking with and badgering Porter for the purpose of hearing him talk while in a heated political discussion.

Porter swears he put a card in a paper about the matter, which was false (page 295). He also admits that he had entered the list as the "*champion liar*" of his locality (page 295). He admits that he was a great joker himself (page 295), and he then answers the following question :

Q. Do you know of your own knowledge of any money being paid or reward given by W. D. Washburn, or any person acting for him with his knowledge and consent, to any person or persons for their vote or influence at the last election of November 5, 1878, or the campaign just preceding such election?—A. I know of none.

On such testimony as this of Porter's the committee is asked to find that men were bribed to vote for the contestee.

A man by the name of Kitowski is said to have been bribed in Washburn's interest, and this is claimed on the testimony of the witness Brower. It may be true that Kitowski received some money for cigars and other expenses incurred at his place in the interest of Washburn; but there is nothing in the testimony that indicates that he was paid anything to support Mr. Washburn (pages 245, 6, 253). Kitowski is not

called as a witness, but the witness Armstrong, in his testimony, states that Kitowski denied ever having received a cent of money (page 304.)

Henry Armstrong, the last of the list of alleged bribed voters, says in his testimony that he was not a supporter of Mr. Donnelly, and had made up his mind to vote for Mr. Washburn before any negotiations were entered into with him in relation to supporting Mr. Washburn. He does admit that he received money to see if certain men would go to the polls, and if necessary to go with his team and get them. He testifies that he used the money received by him to pay for his team and for his work. He did his work before election, and he was a mild kind of worker. When he went to a voter, he says he did not argue in favor of Mr. Washburn, but simply gave him a ticket and he could vote as he pleased (page 303).

We think we have pursued this question of bribery of voters far enough.

EFFECT OF BRIBERY WHEN PROVED.

As it is not claimed even by the contestant that enough bribed votes were cast to change the result of the election in the district unless all numbered ballots (2,282) cast for contestee are rejected because they were numbered, and unless the entire vote (538) cast for him in Isanti County and the total vote (832) given for him in Polk and Kittson Counties are thrown out on account of alleged defective returns, it would seem to be unnecessary to go into the question of bribery save for the purpose of vindicating the sitting member.

As it is very clear, and it will be admitted that the polls can be purged of all the alleged bribed votes, or the entire vote of certain voting precincts wherein the alleged bribery occurred can be thrown out without affecting Mr. Washburn's majority, the rule contented for and quoted by the author of the majority report of the committee (page 16), taken from the minority report in *Platt vs. Goode* (Con. Elec. Cases, 1871-'76, p. 650) would still give Mr. Washburn his seat.

The English cases cited from *Cush. Par. Law* (p. 70, sec. 189, and page 68, section 181) do not go to the extent, as we apprehend, of holding that the whole election in a district where there are several voting places is void because of the bribery at one of those places of an insufficient number of votes to affect the result, but they do go to the extent of holding that an election in a particular voting place may be declared void.

The rule undoubtedly is in this country that where bribery, fraud, or intimidation is so interwoven with the vote of any voting precinct that it cannot be eliminated from the aggregate vote cast with certainty, the whole vote of the precinct may, and perhaps should, be rejected. The unassailed votes in other voting places would, however, still stand. Fraud or bribery does not vitiate what it does not impregnate.

If bribery were proved (as it is not) and brought home to the contestee, we should not draw any fine legal distinctions to save him his seat.

The American cases cited in contestant's brief (*Abbott vs. Frost*, Con. Elec., 1871-'76, page 594, and *Platt vs. Goode*, *supra*) are all to the effect that before a member can be unseated by reason of his own bribery of voters it must appear that his majority was obtained by such means.

To find that a candidate received an untainted majority of the votes cast, and on that find that he was not elected for the reason that other votes were rejected on account of bribery or other cause, would be a bold absurdity. In a contested-election case in either branch of the Congress of the United States the sole question is one of fact in the light

of the law, viz: Who of the parties to the case was elected, if either? The question in no possible case can involve the fitness of the sitting member to hold his seat. In England, where there is no written constitution on the subject of expelling a member, it may be found that the practice has grown up of inquiring into the whole conduct of a member in the course of a contestation; and if he is found unworthy, or rather ineligible, to hold his seat from any good cause, he may be unseated or kept out of a seat, notwithstanding he may have received a clear majority of the honest votes cast in the election. This under some circumstances would only be another mode of expulsion.

Our Constitution provides the mode, and it is the only one pointed out, for purging the House of a member who, for crime or other cause, is unfit or unworthy to hold his seat. The Constitution provides that the House may "*with the concurrence of two-thirds expel a member.*" (Con., Art. I, sec. 5, par. 2.)

Bribery or other crime committed by a member, and which did not affect or influence the result of his election, could in no sense be construed to render his election void. Such has been the holding in several of the States. (3 Watts & Serg., 338; Brightley's Elec. Cases, 134; McCrary on Elec., sec. 229.) Cushing, in his work on elections, questions the application of the English rule in this country in relation to the effect of bribery by the candidate or his agent, in an election, on the right or power to declare an election void (sec. 190). An examination of the English rule as stated by Cushing in his work on elections will make it clear that the principle the parliament proceeds on in declaring an election void is not that the sitting member was not duly elected, but that by his evil conduct he has rendered himself unworthy of being elected and of holding a seat in the British Parliament. The election of a member under such circumstances is declared void as a punishment to the member and as a mode of condemning evil practices, and also to preserve the purity and freedom of elections in that country generally. (Cush., page 70, sections 189, 190, 191.)

Most, if not all, of the English cases put the rule on the ground that bribery works a disqualification of the member to be elected to and to occupy a seat in the body to which he was elected. The basis of the English rule which allows in a contested-election case arising over the election of a member of the House of Commons a finding, where it is proved that the person actually receiving the highest number of votes was guilty by himself or his agent of bribing only a portion of his majority, that he was not elected, must be kept in view to enable a clear distinction to be drawn between the rule which obtains in England and the true rule in the American Congress.

At common law bribery at elections of members of Parliament was a crime. (Rex vs. Pitt, 3 Burrows, 1335, &c.; 1 Russell on Crimes, 155.) The punishment at common law for such bribery was found inadequate, and hence the passage of the statute known as "*The treating act*," of 7 W. III, chap. 4 (1695), which provided that if any candidate, after the issuing of the writ for an election, should give or promise any money or entertainment to any elector *he should be incapable* to serve for that place in Parliament—that is, upon that election. The punishment provided by this act was fixed to remedy the defects of the common law, which, while it punished bribery, &c., in elections, provided no *disqualification* to hold an office, and such had been the holding of courts and legislative bodies.

It appears from good authority—Jacobs (author of the Law Dictionary), who, after citing statutes, 2 Geo. II, c. 24 (1731); 9 Geo. II, c. 38;

and 16 Geo. III, c. 11, which attached some penalties to election bribery in the shape of fines, says: "But these statutes do not *create any incapacity of sitting in the House*. That depends *solely* upon the *treating act* above mentioned," referring to the act of 7 W. III, c. 4. (See Jacobs's Law Dictionary, title Parliament, VI (B3), vol. 5, page 76, ed. 1813; see Russell on Crimes, 155, 159a, ed. 1845.)

The act of 5 and 6 Vict., c. 102, extends the treating act of W. III, and makes it include the acts of the agents of the candidate as well as of himself, and make such acts, whether of himself or of his agents, "directly or indirectly," sufficient to *disqualify*. The agent is a well-known and recognized element in British Parliamentary elections, of which we know nothing in this country. The candidate selects him in that country, and hence there is no hardship in holding the principal responsible for his acts; otherwise all amenability for criminal conduct at elections there would be avoided.

There are other English statutes upon the subject of treating, &c., at elections, and making candidates responsible for the action of their agents as well as their own acts, which must be kept in mind in reading Rogers, Douglas, and other English authorities whose comments are upon cases, governed by these statutes, which are not authority for us.

That bribery by a candidate for an elective office (in the absence of a statute making it a disqualification) does not *disqualify* to hold the office at the common law was held by the Court of Queen's Bench in *Regina vs. Thwaites*, 18 Eng. Law and Eq. Reports, 219, 221, in a proceeding in the nature of a *quo warranto* to try the title to an office, where acts were shown which were by the court held to amount to *bribery*, but which did not affect votes enough to change the majority, and the respondent was therefore held entitled to retain his seat as a member of a municipal council.

The same doctrine is held in Pennsylvania as to a sheriff, in *Com. vs. Shaver* (3 Watts and Sergeant, page 338).

The English rule laid down by Cushing in his excellent work, without giving either the origin or reason of the rule, is calculated to mislead persons in this country.

It is quite demonstrable that the rule owes its existence to disqualifying statutes of England, and can have no application to questions arising in the Congress of the United States under our present Constitution and laws.

In the Galway election case (2 English Reports (Moak's ed.), pages 711, 723), where it was argued that bribery, treating, and undue influence were not disqualifications at the common law, and that the act of 17 and 18 Vict., chap. 102, repealed all the earlier acts making them a disqualification, and itself only made these acts a disqualification by the thirty-sixth section, "after they had been found guilty of the acts by an election committee," the court, taking a different view, gave the opinion, not that the common law made these acts a disqualification, but that, to quote from the opinion of the judge announcing the decision of the court—

The true construction of the statute itself is that the commission of any of these offenses *ipso facto* disqualifies the candidate from being elected, or annihilates his status as a candidate.

The theory of the English cases is that a candidate is for the particular election in which the candidate or his authorized agent violates the disqualifying statutes he becomes ineligible to an election. No such rule obtains under the Constitution and laws of the United States as to Representatives in Congress.

An examination of all the cases cited in Rogers, Douglas, and other English authorities where a member of Parliament has been unseated for bribery, treating, &c., by himself or his agents, where the votes thus affected were less in number than his majority, will show that in every case the decision rests upon special English statutes, with which we have nothing to do.

Bribery in procuring an office is made a disqualification for holding the office by the constitutions of the States of Massachusetts, New Hampshire, Vermont, Rhode Island, Maryland, Missouri, Arkansas, Texas, California, and Florida.

Bribed votes should undoubtedly be rejected, but unless they are numerous enough to change the majority, the candidate receiving the majority should be declared elected. (See 3 Arch. Cr. Pro., 470^a-570¹⁰.)

It is said that in some of the States in this country where bribery in elections is made by constitutional provision a disqualification to hold an office, and bribery is proved against the candidate receiving the highest vote, the election should be declared void, even though the bribery did not affect the result. (Cush., sections 190, 191.)

In some of the States it is held that prior conviction of the disqualifying crime is necessary before such a rule can be applied by a legislative assembly. It is not admitted that either the organic act of a State or its legislature can prescribe disqualifications of any kind for a member of the House of Representatives of the United States, but it may be proper to state here that the constitution of Minnesota (section 15, article 4) gives full power to the legislature of that State to render ineligible to hold office any person guilty of crime, and that legislature has not made bribery of voters a disqualification to hold office, but it has only made it a misdemeanor, punishable by fine and imprisonment in the county jail. (Stat. Minn. 1878, page 5, section 66.)

It may be observed that under no provision of the Constitution of the United States does crime committed by a member in his election disqualify him from taking and holding his seat.

The reason for the English rule wholly fails in the case of a member of the House of Representatives.

Justice Johnson, of the Supreme Court of the United States, in an early case, in speaking of distinctions between American and English legislative bodies, said:

American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice, under the specious appearance of merited resentment. (6 Wheaton, 231.)

No case has been found in this country where any such rule (in the absence of an express constitutional provision) as is claimed to exist in England has obtained in the House of Representatives of the United States, or in any of the States of this Union, but there are a number of cases, as already appears, where the rule is entirely disregarded.

McCrary in his excellent work on "*American Law of Elections*" does not refer to or recognize any such rule, but all through his work it is taken for granted that no such rule has ever had any application to a contest in the House of Representatives of the United States.

It is true the Constitution of the United States makes "*each house the judge of the elections, returns, and qualifications of its own members.*" (Article I, section 5).

In judging of the election of a member, the House deals alone with the question of the number of votes the member received, and if it appears that he has a majority of the votes cast, excluding all illegal and void

votes cast, and a full and fair election has been held by which such majority has been obtained, or at least the majority would not have been affected by any unfairness or improper practices in the election, then the conclusion is irresistible that such member has been duly elected.

In judging of the *returns* of its members, the House deals with the formal returns, at least preliminarily, on which a member is expected to be admitted to a seat in the first instance.

In judging of the *qualifications* of a member, neither the question of *election* nor *returns* is involved. The *qualifications* of a member of the House of Representatives are fixed by the Constitution of the United States, as follows:

No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. (Article I, section 2).

Of these prescribed qualifications the House is the exclusive and final judge.

If before a person has been sworn in and taken his seat the House were to decide that he did not possess the constitutional qualifications, he could not be admitted to a seat. Even if sworn in as a member it would probably not require an expulsion to vacate his seat if the House were to adjudge him without requisite constitutional qualifications entitled to hold a seat.

The power to expel a member is given to meet cases of members admitted to seats who would, under the Constitution, be qualified to sit, but for other than constitutional causes would be disqualified or unworthy to be a member of the legislative body in the judgment of two-thirds of the House. (Article I, section 5.)

The Committee on Elections, under the rules of the House, have only jurisdiction to consider such petitions, &c., touching elections and returns as shall come into question. Such has been the rule of the House since November 13, 1789.

We here quote the rule adopted at that date with a slight amendment of date of November 13, 1794:

It shall be the duty of the Committee on Elections to examine and report upon the certificates of election, or other credentials, of the members returned to serve in this House, and to take into their consideration all such petitions and other matters touching elections and returns as shall or may be presented or come into question and be referred to them by the House. (Con. Manual and Digest (Smith), Rule 75.)

Under the above rule this case was referred to the Committee on Elections.

It will be observed that under it the committee is given no power to consider questions of disqualifications of a member to hold his seat where it appears that he has been duly elected.

The new rule of the House, adopted March 2, 1880, relating to the powers of the Committee on Elections, is as follows:

All proposed legislation shall be referred to the committees named in the preceding rule, viz: Subjects relating (1) to the election of members: to the Committee on Elections. (Rule XI.)

By neither the old nor the new rules, it will be seen, has the Committee on Elections any power except such as relates to the *election of members*.

The conclusion is irresistible that the committee has no right to report against a sitting member who, as in this case, two-thirds of the committee find in effect was duly elected.

NUMBERED BALLOTS.

It is claimed that in seven precincts of the city of Minneapolis the judges of election placed a number on the back of each ballot to correspond with the number of the voter on the poll-list, and that the purpose of doing this was to work a fraud upon the people, and to intimidate the voter so as to require him to cast his vote for the sitting member. The ballots were numbered in these seven precincts in exact accordance with the provision of the law of the State of Minnesota, which had been passed about eight months before the time the election was held in the fall of 1878. (See Sessions Laws of Minnesota, 1878, pages 133 and 134.) An inspection of this law will show that it was carefully drawn, and in all respects provided for a secrecy of the ballots by the judges and clerks. A penalty of a fine and imprisonment is imposed upon any judge or clerk of election for disclosing or allowing to be disclosed how any voter voted at an election. (See Sessions Laws, page 137.)

Prior to the election in November, 1878, a judge of the district court of the State of Minnesota had declared this law requiring ballots to be numbered by the officers holding the election to be unconstitutional, on the general ground that it was a violation of the secrecy of the ballot (Record, page 74). Since the election of 1878, and since this case was argued before the subcommittee, a decision has been rendered by the supreme court of the State of Minnesota, holding this law to be unconstitutional. Your committee need not, for the purposes of this case, turn aside to consider whether this law is unconstitutional or not, and it may be regarded, so far as the election of State, county, and municipal officers in the State of Minnesota are concerned, as unconstitutional. But we hold, first, that in so far as this law related to the judges of the election in the election of a member of the House of Representatives of the United States, it was constitutional; and, second, whether it is to be regarded as constitutional or not constitutional, the numbering of the ballots affords no reason, in the light of the law and the precedents, for rejecting the vote as cast. The legislature of a State does not acquire its right or power to make a law regulating the manner of holding elections for Representatives in Congress from the constitution of the State, but this right and power is derived exclusively from the Constitution of the United States. Section 4, Article I, of the Constitution of the United States is as follows:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This provision of the Constitution of the United States has been under consideration in a very recent case in the Supreme Court of the United States (*ex-parte Seibold et al.*).

An examination of the opinions delivered by Judges Bradley and Field, the former for the majority of the court and the latter for the two dissenting judges, will show that on the question of the derivation of the power of the legislature to make laws regulating the manner of holding elections for members of Congress, all the judges agree that the legislature obtains its power from, and solely from, the provision of the Constitution just quoted. The State legislature is not responsible to the State, nor controlled by the State constitution, in its action in regard to the manner of holding Federal elections. In case of a conflict between the act of a legislature and the constitution of the State in matters

purely of a Federal character, the act of the legislature will prevail, provided it is not in conflict with the Constitution of the United States. This point was distinctly decided in the contested-election case of *Baldwin vs. Trowbridge* (Contested Election Cases in Congress, 1865 to 1871, page 46).

The syllabus of that case reads as follows :

Where there is a conflict of authority between the constitution and legislature of a State in regard to fixing the place of elections, the power of the legislature is paramount.

The case arose over the constitutionality of an act of the legislature of the State of Michigan, passed February 5, 1864, which undertook to give to Michigan soldiers, while in the service of the United States during the late war, the right to vote at all elections authorized by law, whether at the time of voting they were within the limits of the State of Michigan or not. The constitution of the State of Michigan in express terms required the electors to reside in the State three months and in the township or ward in which they offered to vote ten days next preceding such election. The act of the legislature was declared by the Michigan courts unconstitutional, and yet Mr. Trowbridge, the sitting member in that case, was allowed to retain his seat, although he was elected by the vote of soldiers who were absent from the State, and who voted in accordance with the act named. The committee in that case reported, and the House sustained its report, that the law was constitutional in so far as it provided qualifications of electors who voted for members of the House of Representatives of the United States.

Little need be said in view of the decisions of the court and of the House of Representatives to enforce this view. The power of the legislature, being derived directly from the Constitution of the United States, to regulate the manner of holding elections for members of the House of Representatives can in no sense be controlled or limited by the constitution of the State. And there is no limit placed on the power of the legislature by the Constitution of the United States as to the manner of holding elections for Representatives. (See McCrary's Law of Elections, sections 109, 110, 111, 112).

There is an unbroken line of decisions, however, which are to the effect that notwithstanding ballots are numbered in the absence of or in violation of law, they are still to be counted. McCrary, in his Law of Elections (section 312), lays down the rule thus :

Where the statute makes it a misdemeanor for the officer of election to place any number or mark on the ballot of the voter, but does not declare that ballots so marked or numbered by such officer shall be rejected, the true rule is to receive and count them. To reject such ballots would be to establish a rule under which an officer of an election could destroy the effect of a ballot cast in good faith by a legal voter by placing a number or mark upon it.

The direct question came up in the Forty-second Congress in the contest of *Giddings vs. Clark* (House Contested Election Cases, 1871 to 1876, page 91), from the third district of Texas. It appeared in that case that the tickets were marked with numbers, contrary to the statute of the State of Texas, which statute made it a misdemeanor for any judge of election to place any number or mark upon the vote of any voter, but which statute did not declare that the vote of a legally qualified voter should be rejected because his ballot was marked by the judges. The committee of the House in that case was unanimous in holding that ballots thus numbered, although in violation of the direct terms of the statute of the State of Texas, should still be counted. The report was drawn by the Hon. George W. McCrary, the author of the

valuable work on American Law of Elections, and it was concurred in by all the members, both Republican and Democratic. On that report Mr. Giddings, the contestant, a Democrat, was given his seat, and the Republican was unseated. We quote from that report :

We would not be inclined to put a construction upon this statute which would enable an officer of election to destroy the effect of a ballot cast in good faith of a legal voter by placing a number or mark on it. A ballot may thus be marked or numbered without the knowledge or consent of the voter, and it would be manifestly unjust that he should be in this way deprived of his vote. We think it plain that, inasmuch as the statute fixes the penalty for marking a ballot, and does not expressly declare that a marked ballot should be thrown out, the board erred in rejecting the vote of this county upon this ground.

The same question is directly made in the case of *McKenzie vs. Braxton*, Forty-second Congress, Contested Election Cases, 1871 to 1876, pages 19 to 25. The report of the committee in this case was unanimous, and in favor of counting the numbered ballots. This was a Virginia case. There had been a statute in Virginia requiring ballots to be numbered, but a short time prior to the election which gave rise to the contest this provision was repealed. But, notwithstanding the repeal, certain ballots were numbered. The majority of the Election Committee of this House in the Forty-fifth Congress decided to count ballots numbered in violation of law. (*Finley vs. Bisbee*, Report 95, page 28, by Mr. Cobb.)

Many States in the Union require ballots to be numbered—some by constitutional provision. Pennsylvania, Kentucky, and Georgia are examples where ballots are required to be numbered by the organic law of the State, and it seems to be for the purpose of enabling, in case of a contest, the true result to be ascertained, and also for the purpose for preventing frauds and ballot-box stuffing. Many persons believe that the greater the publicity of the vote the more clear and honest will be the expression of the will of the people. In some States voting *viva voce* has been successfully tried. The people of Virginia, from before the time of the Declaration of Independence (June 29, 1776) and during our constitutional government up to the rebellion, voted uniformly *viva voce*. George Washington, John Randolph of Roanoke, and all of the distinguished men of Virginia were ardent advocates of this mode of expressing the will of the people. The people of the State of Kentucky now vote at all elections *viva voce*, save for members of Congress, which is regulated by United States statutes, and it is understood to be universally approved by the people of that State, and this after it has been tried for many years. Ballots are required to be numbered in the State of Illinois.

Members of the committee claim that the ballots were numbered in the precincts named as a mode of intimidating voters. This rises almost to the dignity of a slander on a large class of workingmen and others, who are usually the most independent of voters. It charges them with moral cowardice. The men who desire to resort to treachery in pretending, for bribery or other cause, to support one candidate, and then vote for another may, under some circumstances be inconvenienced by the numbering of the ballots. How many men are there in any community who want to deny their own manhood by saying they do not wish any person to know for whom or for what principle they have voted? Such persons can have no moral or other real influence in society, and they cannot command their own or their neighbors' respect. The fact is, there is rarely to be found in any community a single man who has not for weeks or months openly avowed his purpose to support certain candidates representing the leading issues of the campaign. We are not

however, disposed to condemn the secrecy of the ballot. It may be in certain cases a protection to the electors. The facts in this case afford no pretense for rejecting the vote in the precincts where the ballots were numbered.

There is not an iota of testimony in the whole record which it can be pretended tends to show that one of the electors in such precincts was influenced by reason of the ballots being numbered. The industry of contestant would have discovered some such evidence if the fact existed. The testimony does show that one eccentric or cowardly man, a lawyer (Robinson), refused at the polls to vote because the judges proposed to number the ballot (pages 135, 137-138). This man disclosed the fact that he was a sort of Democrat, and that he did not want any person to know for whom he voted. The conclusion from his testimony is irresistible that he wanted to maintain his standing as a Democrat and at the same time vote for Mr. Washburn, and that by this means Mr. Washburn lost the vote of one cowardly lawyer. Here are two excerpts from his testimony, and further comment is unnecessary:

Q. Are you a Republican or Democrat?—A. I have always acted with the Democrats, except that I do not vote early and often. I am always satisfied with one vote.

Q. Were you a partisan of Mr. Ignatius Donnelly?—A. I decline to answer, only to state that I am partisan to no one. I desire to vote independently, and that was my objection to numbering my ballot.

No other man save Mr. Robinson even asked the judges of election to refrain from numbering his ballot. The testimony discloses that one man only remained from the polls for the alleged reason that ballots were being numbered, and it would seem that this man, desiring to give some reason why he did not vote, offered this by way of an excuse as an after-thought. It does not appear that he complained on the day of election of the numbering of the ballots. Save these two persons there could not be found among the about twenty-eight hundred voters who voted in the seven precincts where ballots were numbered any person who would even profess that numbering the ballots had influenced him not to vote or as to how he voted. This is as it would be expected, when we recollect the true and real character of an American citizen, especially such as resides in the progressive State of Minnesota and other States of the great West. It must be observed that the contestant does not ask to be credited with votes not cast for him by reason of the ballots being numbered, but asks that all the votes cast in the seven precincts where ballots were numbered should be rejected, and the voters of these seven precincts totally disfranchised. In the effort of contestant to prove that persons had been influenced on account of the numbering of the ballots, he proved that most of the witnesses who voted did not know whether the ballots had or had not been numbered, and it is to be presumed that few, if any, of the voters, save the officers of election, in fact knew that their ballots were being numbered.

Ballots were numbered in the first and second precincts of the second ward; in the first, second, and third precincts of the fourth ward; and in the first and third precincts of the sixth ward of Minneapolis, and in no others in the district.

W. D. Hanagan (page 185), when asked, said he did not know whether the ballots in his precinct were numbered or not, although he was a swift witness for the contestant. He was at another precinct besides his own for several hours on the day of the election, during which time he did not find out whether the ballots there were being numbered or not.

Here are a couple of questions put to this witness, and his answers:

Q. Where were you during election day?—A. From nine o'clock to about two and a half or three o'clock in the afternoon I was at the first precinct of the fourth ward. Then I went up to the first precinct of the fifth ward and voted, and remained there until the close of the polls.

Q. Were the ballots cast in the first precinct of the fourth ward numbered?—A. I do not know (page 187).

This is the testimony of one of the contestant's witnesses. William Grimshaw, who lived in the second precinct of the fourth ward, and who was active there on election day, says that he was not positive that the ballots were numbered by the judges (pages 155 and 181). The witness swears that he is uncertain whether the ballots were numbered in the first precinct of the fourth ward.

The witness Gonier, of the first precinct, sixth ward, who peddled tickets there for candidates, is asked, "Were the ballots numbered in your precinct?" and to this he answers, "I do not know" (page 206).

There is other testimony of the contestant's witnesses of the same kind. Had there been complaint at all about the numbering of the ballots there would have been no person about the polls who was ignorant about it. But for the officers of the election the fact that ballots were numbered at these precincts could hardly have been proved. We note this to show that what was not at the time known could not now be held to have intimidated the voters. It is claimed that the ballots were numbered as a part of a scheme to intimidate voters. The fact appears to be that all the papers supporting Washburn published the statement that the ballots would not be numbered as the law requires, and it was at the instance, in some cases, of Democrats that they were numbered (pages 136, 176). The ballots were not, as appears by the testimony, numbered with any view of intimidating voters, nor were they numbered, as claimed, in violation of a professed agreement by the judges of election in Minneapolis. It is true there was a meeting to consult about the matter, at which the majority of the election judges present expressed the opinion that ballots should not or need not be numbered. The following is the testimony of B. F. Nelson as to this meeting (page 174):

Q. Did you attend the meeting of the judges of election of this city held shortly before said election to decide whether or not the ballots should be numbered at the election? If so, state when the meeting was held and what occurred.—A. I did attend the meeting: it was held in the council room, in the city hall building. Opinions were given that it might be proper and lawful to number the ballots. These opinions were given by attorneys called in for that purpose; by other judges, that it was necessary to number them. Some judges decided not to have them numbered at their precincts. The city attorney, William Lochren, informed us one of our judges had decided that it was unconstitutional to number the ballots. We did not agree in that meeting whether to number the ballots or not. There was a motion or resolution offered, but before the vote was taken it was understood that that motion was not binding on the judges. It was simply taken to get the sense of the meeting. I don't remember how the vote stood. It is my impression that the vote stood in favor of numbering the ballots.

Another one of the judges testifies as follows (page 143):

Q. Did you attend a meeting of the judges of election of this city held shortly before said election to decide whether or not the ballots should be numbered at the election? If so, state what occurred.—A. I was present at such a meeting at the council chamber in the city hall. There was a discussion, pro and con, as to whether the ballots should be numbered or not numbered. Some thought that the law in reference to numbering was unconstitutional, but that the supreme court of the State had not declared the law as such; and other of the judges thought, as long as it was not declared unconstitutional by the supreme court of the State, that the law ought to be obeyed and followed; and after somewhat discussion of this kind there was an informal vote taken by the judges: there were about thirteen or fifteen votes in the affirmative and eight or ten in the negative. I mean there was thirteen or fifteen in favor of not numbering the ballots and eight or ten in favor of numbering,

and I voted with those who were in favor of numbering ballots, because the law prescribed it.

Q. Were the ballots deposited in the ballot-box in your precinct at said general election held November 5, 1874, identified by placing on the back of the same a number corresponding with the number set opposite the name of the voter on the poll-lists?—A. Well, the judge of election received each ballot in presence of the other judges and the clerks, and called out the name of the voter, which was taken down by the clerk and numbered, and the same number was written on the back of the ballots; that is the way it occurred; and after it was numbered it was, in the presence of all the judges and clerks, deposited in the ballot-box. There were no exceptions to this rule.

John Hinton, a judge of the election, testified on the same subject (page 177):

Q. Did you attend a meeting of the judges of election of this city, held shortly before said election, to decide whether or not the ballots should be numbered at the election? If so, state when the meeting was held and what occurred.—A. I attended the meeting; the question was discussed. An opinion was given by Mr. Lochren, the city attorney; his opinion was that it was unconstitutional to number the votes, and a vote was taken by the judges present; it resulted in a decision to discontinue the practice of numbering the votes. After that vote was taken there was a dissenting voice, Mr. Daniel Bassett; and the general understanding was that the judges should use their own judgment as to numbering of the ballots in their several precincts or wards. The meeting was held in the council chamber; it was in the afternoon before election, if my memory serves me right.

J. H. Conkey, also one of the judges, in speaking of the meeting of the election judges to consult on the subject of numbering the ballots, says (page 198):

Q. Did you attend a meeting of the judges of election of this city, held shortly before said election, to decide whether or not the ballots should be numbered? If so, state where the meeting was held, and what occurred.—A. It was held at the council chamber in the city hall; I attended this meeting; the matter was talked over there, and it was left to the option of the judges after counseling the city attorney. The city attorney gave the opinion that either way would not invalidate the election; I think he said that there had been a decision rendered in Ramsey County that it was unconstitutional to number ballots. I don't remember whether a vote was taken or not.

The last witness discloses the fact that legal counsel gave the opinion that to number the ballots would not invalidate them, and on this opinion some of the judges acted rather than perform their duty in express violation of the terms of the recent law of the State of Minnesota.

The testimony of Daniel Bassett, a Democrat, and one of the judges, should also be read (page 134).

But for the importance attached to the meeting of election judges by the contestant and certain members of the committee no attention would be given to it here. The meeting was an informal one and solely for the purpose of consultation, and was not intended and could not have been intended to bind any of the judges when they came to perform their official duties. The truth is that the judges of election had to decide between following a plain requirement of the law or disregarding it. Some of them, under the advice they had, concluded to obey the law, notwithstanding the decision of the inferior court that it was unconstitutional.

It is further claimed that the numbering of the ballots in seven precincts of the city of Minneapolis was done in pursuance of a purpose to intimidate the workingmen, who are said to have lived chiefly in these precincts. There is no truth in the statement that the workingmen resided in these precincts. The record furnishes no such evidence. It is hardly proper to refer to the fact that the contestant in his desperation does make such a statement in his brief. But in the argument before the sub-committee this was emphatically denied, and it is still denied on the authority of persons residing in that city, including the mayor and others, who have forwarded affidavits to show that such unsupported

statements were wholly untrue. One witness (Grimshaw), referred to by members of the committee, does say that a large number of workingmen resided in the second precinct of the fourth ward, a precinct in which the ballots were numbered; but this witness utterly disproves the charge that these workingmen were intimidated. On the contrary, he makes it quite certain that in this precinct and ward the workingmen did not want to vote for Donnelly. The vote stood in that ward, according to his statement, 57 for Donnelly and 357 for Washburn. Here is a statement of this witness on this subject in full (page 181):

A. I believe that I have before stated that I was not acquainted in my entire ward; neither am I; but will say that in the second precinct, fourth ward, the one in which I live, there was 414 votes polled at the last election, of which Ignatius Donnelly received 57. I believe I am acquainted with all of these men—will not say all—and know of none that is not a workingman. I am rather well acquainted in the city, having lived here nineteen years, and believe that a large majority of workingmen voted for W. D. Washburn.

It is true that there was great activity in the city of Minneapolis immediately prior to and on election day. There was undoubtedly a rivalry between the cities of Minneapolis and Saint Paul which led to an increased vote doubtless for Donnelly in the city of Saint Paul and a largely increased vote in the city of Minneapolis for Mr. Washburn. Minneapolis was Mr. Washburn's home; he had done much to build it up, to advance its interest, and to provide work for its inhabitants. He was a public-spirited man, and had a just pride in his own city. Some of the contestant's witnesses declared that the election in the Congressional fight of 1878 practically resulted in one issue, and that a contest between the rival cities of Saint Paul and Minneapolis. The following is a question and answer which will throw light on this question (Stevens, page 108):

Q. Was not the Congressional question at the last election considered of greater importance generally than any other office, and did it not cause more feeling among the voters?—A. Except upon a comparatively small number of friends of candidates for local officers, the Congressional fight, or so-called contest, for city supremacy, was practically the only issue; political consideration apparently sank out of sight, the rallying cry being "*Vote for Washburn and Minneapolis. Down with Saint Paul.*" *The battle soon became a rout, and ultimately a panic.*

The testimony of McCarthy is to the same effect (page 24).

It is proper to observe that the nomination of Donnelly was distasteful to Democrats, especially in Minneapolis (page 110).

The election in Minneapolis is clearly proved to have been an orderly one (page 109).

Men were not discharged, as has been claimed, by their employers because they voted for Washburn (118).

In the conduct of the election on election day Democrats were very lukewarm in Donnelly's interest (page 45). Some of the witnesses say that Donnelly's friends were afflicted with "APATHY" (pages 140-41.)

The only testimony which tends to prove that workingmen were afraid to vote for Mr. Donnelly on account of the fear that they would lose their jobs is purely hearsay, and entitled to no consideration whatever. Some of the witnesses testify that the workingmen did not vote for Mr. Washburn, but that his majority came from the citizens of the city of Minneapolis (page 113).

Much has been said about Mr. Donnelly's last meeting in the city of Minneapolis. It is claimed that his meeting was interrupted, and in that way he was deprived of his proper influence upon the voters. It appears that in the meeting held by Donnelly in Minneapolis, on November 2, 1878, he indulged in a personal tirade against Colonel King,

a former member of Congress, and attacked his character and reputation. This Mr. King resented, and advised Mr. Donnelly that unless he desisted from such allusions to him he would expose him in a way that he (Donnelly) would not want. Donnelly held his meeting, and no further interruption took place (page 110).

The witness McGurk says that in this meeting Donnelly succeeded in converting quite a number, and that the attempt to break up the meeting failed. He further testifies on this point (page 114):

Q. Do you not think that this attempt was an advantage to Mr. Donnelly instead of a detriment?—A. I think it was, judging from the indignation expressed by the people at Mr. King and the party. Mr. King was supposed to be the representative of Washburn.

Q. Then, in your opinion, the election, so far as it was affected at all, was so affected in favor of Mr. Donnelly by the scenes at this meeting?—A. Yes.

All of the alleged testimony in the record on the subject of intimidation, if, indeed, any of it could be called competent testimony, is so utterly shadowy that it does not deserve a critical review here.

We should, in the consideration of the charge of intimidation, keep in mind the salutary rule of law, repeatedly affirmed by the House of Representatives, that where it is alleged that a large number of persons have been deterred from voting by violence or intimidation the testimony of those persons should be produced, or at least some of them. The opinions and impressions of others are not sufficient (McCrary's Election Laws, 430-441; *Norris vs. Handley*, 42d Congress).

The rule of law universally recognized where elections are held by the people is, that those who may have voted, and yet did not when they could have done so, are bound by the result (McCrary's Election Laws, sections 445-448; 10 Minn., 107).

The attempt on the part of members of the committee to work out some sort of demonstration from a comparison of the votes cast on different years in the city of Minneapolis is exceedingly far-fetched, and hardly deserves notice. To show the folly of attempting to demonstrate anything from a comparison of votes on different years in the city of Minneapolis we insert a statement showing the vote on different years for different candidates, Republican and Democratic, in both of the cities of Minneapolis and Saint Paul. It will be observed from this statement that with a very light vote in 1879 the Republican candidate for governor received almost as great a majority as Mr. Washburn in the city of Minneapolis, and the Democratic candidate for governor received only about one-third of Donnelly's vote in that city in 1878. It will also be observed that the vote in the city of Saint Paul fluctuated in the years mentioned in the statement quite as much as in the city of Minneapolis. The following is the statement:

Statement of the vote cast in the cities of Minneapolis and Saint Paul for certain candidates, and in the years below specified.

	Minneapolis.	Saint Paul.
1875.		
Pillsbury, governor, Republican.....	3, 652	2, 459
Buel, governor, Democrat.....	1, 041	3, 116
1876.		
Hayes, President, Republican.....	4, 149	2, 506
Tilden, President, Democrat.....	3, 229	3, 553
Stewart, Congress, Republican.....	3, 412	2, 658
McNair, Congress, Democrat.....	3, 862	3, 101
(Stewart, a resident of Saint Paul, and McNair, resident of Minneapolis.)		
Legislative vote in Minneapolis, same year, was Republican, 4,214;		
Democrat, 2,929; in Saint Paul, Republican, 2,113; Democrat, 2,979.		
1877.		
Pillsbury, governor, Republican.....	3, 245	2, 867
Banning, governor, Democrat.....	1, 569	3, 078
Pillsbury was a resident of Minneapolis, and Banning of Saint Paul.		
A very light vote in both cities.		
1878.		
Washburn, Congress, Republican.....	5, 033	1, 378
Donnelly, Congress, Democrat.....	1, 565	3, 770
Same year Democratic majority for supreme judge in Saint Paul was only.....		
On State ticket (auditor).....		
County ticket (sheriff).....		
Same year Republican majority in Minneapolis on State ticket was.....		
Supreme judge.....		
County ticket.....		
1879.		
Pillsbury, governor, Republican.....	2, 814	1, 007
Rice, governor, Democrat.....	504	2, 922
Same year Democratic majority in Saint Paul on county ticket was.....		
Same year Republican majority in Minneapolis on county ticket was.....		

The following statement shows the vote for governor in 1879 in the election in the counties composing the third Congressional district of Minnesota. It may be of value by way of comparison.

Third Congressional district, vote of 1879 in said district.

County.	Rice.	Pillsbury.	County.	Rice.	Pillsbury.
Aitkin County.....	1	14	Morrison County.....	492	328
Anoka County.....	266	371	Otter Tail County.....	653	1, 517
Becker County.....	133	653	Pine County.....	105	61
Benton County.....	279	191	Polk County.....	338	730
Big Stone County.....	41	128	Pope County.....	56	621
Carlton County.....	64	51	Ramsey County.....	3,318	1,098
Chicago County.....	203	636	Saint Louis County.....	177	213
Clay County.....	85	340	Sherburne County.....	166	319
Crow Wing County.....	196	295	Stearns County.....	2, 270	913
Douglas County.....	123	643	Stevens County.....	403	374
Grant County.....	44	389	Todd County.....	350	573
Hennepin County.....	998	3, 744	Traverse County.....	3	18
Isanti County.....	45	327	Wadena County.....	57	321
Kanabec County.....	22	79	Washington County.....	1, 472	1, 183
Kittson County.....	96	138	Wilkin County.....	99	198
Lac-qui-parle County.....	17	591	Wright County.....	1, 326	1, 347
Lake County.....	11	4	Yellow Medicine County.....	87	722
Meeker County.....	363	870			
Mille Lacs County.....	56	106	Total.....	14, 425	20, 106

SUPPLEMENTAL RETURNS.

Through an error of the secretary of the State of Minnesota, in not furnishing the proper blanks to the election officers, there were a number of instances where the votes polled for candidates for Congress were not returned and counted by the county canvassing boards (page 320). The omission to make full returns occurred in Minneapolis, and in

Stearns, Morrison, and Douglas Counties. The contestee does not dispute the right of the contestant to count the votes cast in the counties of Stearns and Morrison, in each of which counties the contestant received a majority. Nor do we understand that any serious objection can be made to counting the vote in Leaf Valley precinct, in Douglas County (page 270) where the contestant claims to have received all the votes.

Supplemental returns were made on the 12th day of November, 1878, by the election officers of the precincts in the city of Minneapolis, where they had omitted to make the returns for member of Congress immediately after the election. These precincts were first precinct, first ward; second precinct, second ward; and third precinct, fourth ward. The majority for Washburn in these precincts was 714 (pages 348, 349.) We see no valid objection to these supplemental returns. They were made by the proper officers and within the time required by law to canvass and make returns. The supplemental returns from the three precincts of Minneapolis were duly canvassed by the county canvassing board (pages 348-351); but it is hardly necessary to waste time in considering the validity of these supplemental returns. They were put in evidence by the contestant (pages 58-63). The testimony clearly and unmistakably, independent of the supplemental returns, shows the vote as cast for member of Congress in these precincts. It must be observed that all the witnesses who testified on the subject of the vote in these precincts agree that the vote for member of Congress was duly canvassed, though not returned.

Asa R. Camp, one of the judges of the election of the second precinct of the second ward in the city of Minneapolis, testifies to the vote cast for Congress in that ward (page 322). And he testifies also that the supplemental return, as made, is true in all respects (page 323).

Isaac McNair, one of the judges of the election in the same precinct and ward, testifies that the vote was canvassed by the judges of election for member of Congress; and he also gives the vote from recollection and memorandum, as it appears by the supplemental return (pages 323, 324).

Thomas F. Andrews, another one of the judges in the same precinct, swears to the same state of facts (pages 325, 326).

John M. Williams, one of the clerks of election of the second precinct of the second ward, testifies to the same facts stated by the judges of election (pages 326, 327).

Charles Thielen, a judge of the election of the first precinct of the first ward of the city of Minneapolis, testifies to the canvass of the votes in that precinct and to the correctness of the supplemental return (pages 327, 328).

John Thielen, another one of the judges of election for the first precinct of the first ward, establishes the same fact (pages 328, 329).

Michael Lyons, the other judge of the election in the precinct and ward just named, is equally clear in establishing the fact that the supplemental return made for that precinct and ward was correct in giving the vote for member of Congress (pages 329-332).

Allen Hill, one of the judges of election in the third precinct of the fourth ward, testifies that the vote for member of Congress was canvassed, and, by reason of a deficiency in the number of blanks furnished, was neglected to be returned. But he testifies to the vote of that precinct, and that it corresponds with the supplemental return (pages 332-335).

Frederick Paine, one of the clerks of the election in the third precinct of the fourth ward, testified to the canvassing of the vote and the ascertainment of the result as to member of Congress. He gives the vote in this precinct for Washburn, 566; Donnelly, 83; Stewart, 1; and says that 19 ballots contained no vote for member of Congress. He says, also, that this vote was announced on the night of the election publicly, and that it corresponds with the supplemental return made by the officers of the election on the 12th day of November, 1878 (pages 335-339). The papers on the following morning after the election, to wit, November 6, 1878, offered in evidence in this case, give the vote of this precinct and ward, as well as of others, as appears by the supplemental return (page 352). One at least of these papers, the *Saint Paul Globe*, was published in the interest of Mr. Donnelly (page 338). The witness Paine makes it certain that the vote was announced as soon as canvassed by the judges of election, and was taken by the reporters from the figures given as the result of the election in this precinct.

William Cheney, another judge of the election in the third precinct of the fourth ward, also gives the result of the canvass and the election in his precinct; and he establishes the fact that the supplemental returns for his precinct were correct (pages 338-342).

Daniel Bassett, a Democrat, and one of the judges of election in the third precinct of the fourth ward, also testifies to the correctness of the vote returned for members of Congress in his precinct, though his memory has to be refreshed by exhibiting to him an original paper containing a memorandum of votes, kept at the time the canvass was made in his precinct. The supplemental returns made by the judges of election will also be found in the record as offered by contestee (pages 348-350).

The only person who makes any question about the correctness of the vote in these three precincts is John B. Bottineau, who was a clerk of the election in the third precinct of the fourth ward. He made a protest as to his precinct against the supplemental return made by the judges of the election and the other clerk, on the ground, as it appears by his protest, that he himself kept a memorandum (not a tally-sheet), which he is not willing to say was honestly kept, but which he says showed the vote in this precinct to have been, for Washburn 336, and for Donnelly 313 (page 350).

Some respect might be shown to this protest (although there was no authority of law for making it) if the man who signed it was himself willing to say that his own memorandum was true. Even in his protest he is careful not to say that the vote for Donnelly and Washburn stated on his memorandum was the correct vote received by them at the election, but when he is put to the test of swearing to it he utterly fails to say that it does give the correct vote. It must be noted that the supplemental return in this case was signed by Daniel Bassett, the Democratic judge of the precinct and a partisan of Mr. Donnelly. When Mr. Bottineau was asked, in his examination by the contestant, to give the manner in which the count and canvass of the ballots were made, and state any discrepancies in the different tallies made by the judges and clerks during the count and canvass, he had recourse to his own memorandum kept at the time. The memorandum this witness refers to was not the tally-sheet, but a mere memorandum kept by him, on which he put down or pretended to put down figures, at different times as the canvass proceeded, indicating the vote as cast for members of Congress. An inspection of a printed copy of this memorandum (page

281) and of the original in evidence will enable any person to see that this witness, either corruptly or honestly, put down the figures in such way as to show that Donnelly received 230 votes more than the tally-sheet shows he received, and which the judges and the other clerk of the election make clear was the true vote. When put to the test this witness confesses that he made an error in keeping his memorandum (page 277). On the night of the day of election, when the canvass was made, he did not even pretend to claim that there was any discrepancy between the vote as kept by the other officers of election and himself (page 277). He was asked how it was possible for a difference of two hundred in the vote for Donnelly to exist and he not know it at that time, to which he answers:

It is either a mistake of one of us, and perhaps a mistake of both of us. I am confident we were both mistaken (page 277).

We give in full the closing part of this witness's testimony, in order to make it appear that no reliance is to be placed upon his pretended protest. It will be observed that he says, "I cannot say that I believe it (referring to Exhibit C, containing a true showing of Donnelly's vote), nor can I say that I disbelieve it" (page 278).

Q. From your intimate knowledge of the politics of this county, as before stated, do you believe Exhibit C contains a true showing of Donnelly's vote?—A. I cannot answer it. At the time I sat it down I believed it to be the actual vote of Donnelly. I cannot say that I believe it now, nor can I say that I disbelieve it.

Q. When you swore to Exhibit D did you believe that Donnelly had received the number of votes set opposite his name in Exhibit C?—A. I don't know whether I did or not; I expected the two tally-sheets would correspond as they did in relation to other candidates, which they did not.

Q. Were you not surprised at Donnelly's vote on the night of the election when you made this Exhibit C, showing that he received 313 votes?—A. I was surprised that he had received so small a vote, according to the enthusiasm in his favor that I had seen.

Q. Did you make the figures "200" and "30" set opposite Donnelly's name, in Exhibit C, as the votes were read out on election night?—A. The votes were not read out on election night by either of the judges or clerks in making the canvass; I placed those figures at the same time as the other tally-sheets, as they were announced as found by each, judges and clerks.

NOTE.—This being the last witness examined on the direct, in Minneapolis, contestant's counsel desires to say, may the Lord have mercy on the hindmost in the final outcome. Amen.

The objection to these supplemental returns is so purely technical that we hardly think it important to give the matter the consideration already given to it in this report.

Some complaint is made that the contestee did not have the ballots counted in the ballot-boxes and offer proof of the result of such count in this contest; and certain members of the committee think this would have been the best and highest evidence of how the vote stood. The contestee has given the vote as cast in these three precincts, as found by the officers who held the election, on an *actual count* of the ballots made by them as soon as the polls closed. It is hard to conceive how it is possible for a new count of the ballots by unauthorized persons long after the election would constitute higher evidence of the true state of the vote in these precincts than we have already given. It would be exactly the same character of evidence, but given by persons not authorized under the law to make the count.

UNORGANIZED COUNTIES.

It was stoutly claimed by the contestant that the votes cast in the several counties of the district should be excluded wholly, on the ground that they were in unorganized counties. Some dispute arose between

counsel as to what constituted an unorganized county; and there was some difference between counsel as to what particular counties were organized by express provision of the statutes of the State of Minnesota and what counties were not organized. It is not at all important, in the view we take, whether these counties were organized or not, because it is perfectly clear, under the statutes of Minnesota, that for the purpose of voting for State officers, for members of the legislature, and for members of Congress, voters living in unorganized counties are as much entitled to vote as those who live in organized counties. It is understood that the committee is unanimous in holding that the vote of no county in the district should be rejected on the ground that it was an unorganized county, and we shall give this subject no further consideration.

ISANTI COUNTY.

The contestant attacks the entire vote of Isanti County. The returned vote from that county was 538 for Washburn, 137 for Donnelly, scattering 2. The contestant's objection to counting the vote returned in the county of Isanti is set forth in paragraph 8 of his notice of contest. It is as follows:

The votes alleged to have been cast for you at said election in the county of Isanti, in said district, were not cast, or counted for you, or returned, or canvassed, as provided by law.

The true construction of this part of the notice of the contestant is that he objects, not to the vote because it was not cast, nor because it was not counted, nor because it was not returned, nor because it was not canvassed, but because it was not cast, counted, returned, or canvassed *as provided by law*. There is nothing in the evidence offered by the contestant tending to show that the vote of this county was not cast as returned, was not counted as returned, or was not canvassed as returned, except what appears on pages 68 and 69 of the record. There it is made to appear that there was a complete abstract of the vote made as cast in the several election districts of the county, and duly certified to by the auditor of the county and district, whose certificate is attested by one A. B. O'Dell, who designates himself judge of probate, and Jonas Burch, who signs himself as justice of the peace. Had O'Dell signed and attested the auditor's certificate as justice of the peace there would have been no objection to counting this vote. This is a mere irregularity, which does not vitiate the *returns*; and if it did, the vote is not to be rejected unless the contestant shows it to be illegal. (McCrary's Election Laws, section 302, and cases there cited).

The statute of Minnesota (Bissell's Revision, vol. 1, p. 172, sec. 28) provides:

The county auditor and two justices of the peace of his county, by him selected, constitute the county canvassing board, and on or before the tenth day after the election said board shall proceed to open and publicly canvass the several returns made to the auditor's office.

Section 40 of the same Revision of the Statutes (page 176) is as follows:

The abstracts of the votes for members of Congress and electors of President and Vice-President shall be made on one sheet, and, being certified and signed in the same manner as in case of abstracts of votes for county officers, shall be deposited in the said county auditor's office, and a copy thereof, certified as aforesaid, shall be inclosed, directed to the secretary of state, and indorsed on the outside of the envelope with these words: "Abstract of votes for (naming the officers) returned to the auditor's

office of (inserting the name of the county) county," and the said auditor's signature; and the said auditor shall forward the same to the secretary of state within eleven days after such election.

The statutes of Minnesota require nothing of the county canvassing board but to compile the returns made to the auditor of the county, and the auditor to certify to the same. The justices of the peace selected by the auditor to constitute with him the county canvassing board are not required to do anything more toward certifying to the truth of the abstract than to *attest* the signatures of the auditor. The statutes of Minnesota provide a form for the abstract and for the certificate, and in that form the two justices of the peace sign their names under the word "*attest*" to the left of the signature of the auditor. (See Bissel's Statutes, page 174; also Young's Minnesota Statutes, 1878, page 46.) The real purpose of selecting justices of the peace as a part of the county canvassing board and to assist the auditor of the county is doubtless that they shall be present to prevent the auditor in making up the abstract of votes, if so disposed, from committing any fraud. The board has no authority either to accept or reject any returns made to the county auditors, in their estimate of the votes, for any informality in holding an election or making returns thereof. The following is the law of the State on this subject:

No election returns shall be refused by any *auditor* for the reason that the same are returned, or delivered to him, in any other than the manner directed herein; nor shall the canvassing board of the county refuse to include any returns in their estimate of the vote for any informality in holding any election, or in making any returns thereof, but all returns shall be received and the votes canvassed by such canvassing board and included in the abstracts; provided there is a substantial compliance with the provisions of this chapter. (Sec. 37, Bissel's Statutes, p. 175).

For an authoritative construction of this section see 18 Minn., 351.

The final canvass of the vote for a member of the House of Representatives is made by the governor and secretary of state, in the presence of the auditor of state, the attorney-general, and one or more judges of the supreme court. We quote from section 41 of Bissel's Statutes, page 176, as follows:

Within twenty days after said election the governor and secretary of state, in the presence of the auditor of state, the attorney-general, and one or more judges of the supreme court, shall open the returns, made to the secretary of state, for members of Congress and for electors of President and Vice-President of the United States, and shall forthwith proceed to ascertain the number of votes given to the different persons for said offices, and the persons having the highest number of votes shall be considered duly elected.

It is thus made perfectly clear that it is the final action of the governor and secretary of state, who have before them a complete abstract of the votes of each county of a Congressional district, which determines the election of the member of Congress. The presence of the auditor of state, the attorney-general, and one or more judges of the supreme court is required to insure perfect fairness in this canvass and entire freedom from fraud; and, possibly, they are required to be present to aid the governor and secretary of state in the canvass in case questions should arise in relation to the canvass. The contestant desires that an entire county should be disfranchised, not because it is made to appear by the final canvass of the vote of this county that it was not properly cast, but because one man attests the certificate of the auditor who does not sign himself a justice of the peace. It is not proved that the actual canvass of the vote by the county canvassing board in this county was not made by the auditor and two properly selected justices of the peace. Indeed it does not appear in the case that the attesting witness, A. B.

O'Dell, who signed himself as judge of probate, was not in fact a justice of the peace. The most that can be said for this certificate to the abstract of the vote is that it is informal, and this the statute of Minnesota, in express terms, provides shall not be a good ground for setting it aside. We quote from the section of the statute which prescribes the form of an abstract of votes for county canvassers :

The following is the form of the abstract of votes provided for herein to be used by all county canvassing boards, but no election shall be set aside for the want of form in the abstracts, provided they contain the substance. (Section 33, Bissell's Statutes, page 173.)

See also form of abstract and certificate, Young's Minn. Stat., 1878, page 46.

This single item of evidence against counting the vote of Isanti County is that the auditor's certificate has not been duly attested. It cannot be said that the abstract of the vote was not canvassed by the proper officers and in accordance with the law of the State. But if it even appeared that but one justice of the peace acted with the county auditor in making up the abstract and canvassing the vote of the county there would be no legal objection to it under the laws of that State. Subdivision 3, section 1, title 1, chapter 3, Bissell's Statutes, page 118, reads as follows :

Words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers or persons.

We do not think it is even important to rely upon this excellent provision of the statute of Minnesota. But if there should be any doubt about it, the general principle of this statute makes it clear. It has frequently been held, in the absence of such a statute as we have just quoted, that where a certificate is by law required to be made by a board of officers composed of three or more persons, it is sufficient for a majority of such board to join in such certificate. (See McCrary's Law of Elections, section 158, where the subject is discussed ; also Niblack *vs.* Walls, Forty-second Congress, where it was held that if less than a majority sign the certificate is not good.) In the case of Niblack *vs.* Walls the committee say :

The committee are of the opinion that where the law requires the certificate to be made by three officers, a majority at least must sign to make the certificate valid.

Much stress is laid upon the fact that one of the attesting witnesses to the certificate of the abstract of votes was a mere intruder. While it may be true that where an intruder into a board, which had a duty to perform requiring some judicial action, and it appeared that such intruder participated in the determinations of such board, and was allowed a voice in the deliberations of the board, would render the acts of such board invalid, yet, as in this case, where the alleged intruder is not shown to have performed any duty, or attempted to perform any duty, other than to sign his name in the place of a justice of the peace, as a mere witness to the certificate of an officer, attached to an abstract of votes not shown to have been illegal or improperly made, it is hard to conceive how such signature could invalidate the acts of the other officers, who had legal authority to act.

The case of Delano *vs.* Morgan (2 Bartlett, page 171) is said to be in point, and to sustain the claim of the contestant that this certificate to the abstract of votes is not good, and that the whole vote should be thrown out. There is no possible analogy between the two cases. We are not prepared to say that the law of that case is right. The question

there was whether two persons, who were the judges of the election in Pike Township, Knox County, Ohio, could legally hold an election while sitting with a third person, who acted as a judge, who had not the qualifications of an elector, and under the law of Congress and the constitution and laws of Ohio was not competent, and was ineligible to act as a judge of election. By virtue of the statute of the State of Ohio in force at that time three persons, and not two in any case, were required to act as judges of election, each of whom was required to have the qualifications of electors. These judges of election were not canvassing officers in any sense, but it was their duty to pass upon the qualifications of each elector at the polls during the time the vote was being cast.

From a reading of the report in the case of *Delano vs. Morgan* it is not at all clear that if there had been two competent judges and no supposed intruder in the board the vote of this township would have been thrown out. There are members of this committee who have very decided views against the correctness of that decision. They think that, notwithstanding a person acted in the capacity of a judge of the election who had not the legal qualification to serve as such judge of election, yet if he did act he was *de facto* a judge of the election, and the whole vote of the township should not have been rejected and the voters disfranchised without proof that the board had acted fraudulently or wrongfully in the conduct of the election.

The views of the minority of the committee, as presented by Hon. M. C. Kerr, of Indiana, in the *Delano-Morgan* case, seem to be unanswerable. (*Contested Election Cases, 1865 to 1871, page 183.*)

The case of *Howard vs. Cooper* (1 Bartlett, 282) is supposed to sustain the claim that the return of the vote given in Isanti County, as it appears in the record, is not a valid one. That case was one where there were but two members of the board of inspectors to receive the votes, where the law required in express terms that there should be three. In the absence of one of the three members of the board of inspectors in the State of Michigan, where this case arose, the bystanders were required to elect an inspector to fill the vacancy, and this was not done. Under the state of the law in Michigan at that time it was not possible to have a board of inspectors constituted of a less number than three. The committee in the Michigan case say:

Your committee have rejected the vote of the township of Van Buren. The law requires that the board of inspectors shall be composed of three persons in number. The proof is clear that there were but two. As there was no board of inspectors known to the law your committee see no way by which any legal effect can be given to the returned vote. They have, therefore, deducted it, although it can in no way affect the decision in this case, whether it be deducted or retained.

The above is all the report contains on the subject of rejecting the vote of Van Buren County. It is made perfectly clear that the committee in that case put their decision on the ground that a board of inspectors consisting of but two persons only could not, under the laws of Michigan, legally act. We quote from the remarks of Mr. Dawes, a member of that committee, while the case was under discussion in the House:

In the town of Van Buren, in that county, there were but two inspectors of election, although the law requires three. The town clerk is *ex officio* one of the inspectors of election. In that township the town clerk was not present during any part of the day except to cast his vote and go away. The law requires that in the absence of any one of the inspectors appointed, one or more shall be chosen from the bystanders to take his place, who shall continue to act as inspector. The town clerk is also required to be one of the clerks of election to record the votes.

But neither of these cases can be said to have any sort of analogy to the one under consideration, where the sole question is whether the failure to have two attesting justices of the peace to a certificate attached to the abstract of the votes of a county justifies the rejection of the entire vote of a county. This abstract of the votes cast in the county of Isanti is not attacked on the ground that it is in any sense untrue. It is doubly certified to be true, aside from the formal certificate already referred to. To this same abstract is appended the following certificates from the auditor of Isanti County and the secretary of state of Minnesota (page 69):

STATE OF MINNESOTA,
County of Isanti:

I, T. C. White, county auditor of said county, do hereby certify the foregoing to be a full and correct copy of the original abstract of the returns of the general election held in said county and State on the 5th day of November, A. D. 1878, now on file in my office.

Witness my hand and the official seal of said office, at Cambridge, in said county, this 8th day of November, A. D. one thousand eight hundred and seventy-eight.

} OFFICIAL SEAL OF }
} COUNTY AUDITOR. }

T. C. WHITE,
County Auditor.

STATE OF MINNESOTA,
City of Saint Paul, ss:

OFFICE OF SECRETARY OF STATE.

I, J. S. Irgens, secretary of state of the State of Minnesota, do hereby certify that I have carefully compared the foregoing with the original thereof on file in said office, and the same is a true copy thereof, and of the whole of the same.

In witness whereof I have hereunto set my hand and the great seal of the State, at said Saint Paul, this 11th day of February, A. D. 1879.

[SEAL.]

J. S. IRGENS,
Secretary of State.

Aside from this abstract of votes, as given on pages 68 and 69 of the record, the contestant has himself put in the record the highest evidence of the fact that the vote of Isanti County was cast and returned as it was counted. On page 58 of the record we find, over the certificate of a notary public, the following:

8th. Contestant offers certified copy from office of secretary of state of abstract of votes cast in the several counties in the third Congressional district at the general election held on the 5th day of November, A. D. 1878; also certain certificate of the State canvassing board, hereto attached and marked "Exhibit 8."

By reference to Exhibit 8, thus put in evidence by the contestant, on page 72 of the record, we find the vote of Isanti County is put down as cast—Washburn, 538; Donnelly, 137; scattering, 2.

This abstract, relied upon by the contestant to prove the vote as cast in the several counties of the Congressional district, is certified to by the governor, secretary of state, auditor of state, attorney-general, and the chief justice of the State of Minnesota, and there is also a special certificate attached to this same abstract in the words and figures following:

STATE OF MINNESOTA,
Office of Secretary of State:

I, J. S. Irgens, secretary of state of the State of Minnesota, do hereby certify that I have carefully compared the foregoing abstract of votes for members of Congress cast in the third Congressional district, State of Minnesota, with the original abstract now on file in this office, and that the same is a true and correct copy thereof.

Witness my hand and the great seal of the State this 19th day of February, A. D. 1879.

[SEAL.]

J. S. IRGENS,
Secretary of State.

The contestee has also put in evidence, properly certified, a complete abstract of the vote of the district (Record, pages 343, 346).

It has already been made to appear that the notice of contestant does not directly attack the vote of this county. If, in the notice, the contestant intended to charge that the vote was not cast it was his duty to offer proof in support of the charge. The record is silent. If he, by his notice, intended to claim that the vote was not counted he should have proved that claim. If, by his notice, he intended to allege that the votes of the several voting districts of the county were not returned by the county canvassing board it was his duty to have offered proof of that. If, by his notice, he intended to deny that the vote of this county was not canvassed on him rests the burden of proof of that. He contents himself by simply claiming that there is a failure to have a suitable number of duly authorized persons sign the certificate to the abstract by way of attesting it.

The defect in the returns from Morrison County, where the county auditor wholly fails to sign the certificate, and only one justice of the peace signs it, is not regarded by the committee (pages 304, 284).

Before leaving this subject it may be proper to go further into the question of the duties of canvassing officers. Such duties, under the statute as it exists in the State of Minnesota, are purely ministerial. The canvassing board has only the right to cast up the votes as they appear from the returns of the officers of the different precincts of the county. They have no judicial power. In the case of the State *vs.* Stearns (44 Missouri, page 223) the court, after holding the duties of such canvassing board to be purely ministerial, say:

When a ministerial officer leaves his proper sphere and attempts to exercise judicial functions, he is exceeding the limits of the law and guilty of usurpation. To permit a mere ministerial officer arbitrarily to reject returns at his mere caprice or pleasure is to infringe or destroy the rights of parties without notice or opportunity to be heard; a thing which the law abhors and prohibits.

McCrary, in his work on Elections (section 82), says:

The true rule is this: they must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose, and this necessarily implies that if a paper is presented as a return and there is a question as to whether it is a return or not they must decide that question from what appears upon the face of the paper itself. Thus in New York it has been held that the duties of the canvassers were "to attend at the proper office and calculate and ascertain the whole number of votes given at any election and certify the same to be a true canvass." This is not a judicial act, but merely ministerial. They have no power to controvert the votes of electors.

In a case in 22 Barbour, page 77, the following language is used:

They (the canvassers) are not at liberty to receive the vote of any one outside of the returns themselves; their duty consists in the simple matter of arithmetic.

McCrary also says that the doctrine that canvassing boards and return judges are ministerial officers, possessing no discretionary or judicial power, is settled in nearly or quite all of the States of the Union.

It has been directly settled by decisions in the State of Minnesota. (2 Minn., p. 180; 10 Minn., p. 107; 18 Minn., p. 351.)

See McCrary's Law of Elections, sections 81, 82, 83, 84, and 85.

Even though the return must be set aside, the election must stand, unless the party who attacks it shows fraud or other illegality in the election. (McCrary's Election Laws, sections 306 and 364-369.)

It is hard to conceive how a mere ministerial board of officers can be rendered illegal and all its acts declared to be void, simply because one person does not sign himself as an attesting witness to a certificate annexed to an abstract by such designation as to show affirmatively that he was a proper officer to do so.

It may be proper to again observe that the contestant, in his printed argument before the committee, rested his objection to the vote of Isanti County solely upon the ground that the abstract of the vote, as certified on page 64 of the record, was not duly signed, and not upon the ground that the abstract was itself inaccurate or false in any respect. It is true he claims (which is not true) that the burden rested on the contestee to go behind the return and prove the vote. It is quite sufficient to say that the contestant has himself conclusively performed that duty for the contestee, if it were admitted that it was the latter's duty to have offered any proof on the subject before the vote was attacked. We do not admit, but deny, that the burden was at all, under the notice of contestant, thrown upon the contestee to prove the vote of Isanti County. The contestee has, however, himself made the proof. As already appears, the notice of contestant does not attack the fact that the vote was cast. He simply undertakes to allege that it was not cast, &c., *as provided by law*, leaving the fact of its being cast to remain unchallenged. The contestant, moreover, directly admits in his brief, in effect, that the vote was cast as returned and counted. While he says the burden rested upon the contestee to prove this fact, and that the contestee declined to do so, he does say, quoting his exact language, "Had he done so the contestant was prepared to show the grossest irregularities in the conduct of the election in said county." He thus admits that the vote was cast, but seems to think that when contestee offered proof of the fact, which he himself has already proved (as well as the contestee), that it would open the door for him to offer proof of the grossest irregularities in the conduct of the election in that county, notwithstanding the fact that there is not a word in his notice of contest which indicated any kind of irregularities in the election in that county, but he failed to do so. This county gave to the contestee, Mr. Washburn, a majority of 401, nearly 200 in excess of the majority which certain members of the committee find was the majority of the contestant after rejecting all the votes as indicated in its views. It is thus made to appear that, on what could not be dignified as a technicality of the law, it is proposed to unseat the sitting member, and to seat a man who was not, as is admitted by himself in his printed argument, elected.

It should be noted, in conclusion, on this point, that the law makes it the duty of the committee or the House to send for and tabulate the original precinct returns if the true vote cannot be ascertained from the return. (McCrary, &c., section 345.)

POLK AND KITTSOON COUNTIES.

A portion of the committee propose to throw out the entire vote of Polk and Kittson Counties. The returned vote in Polk County was 659 for Washburn, 180 for Donnelly; and in Kittson County there were 183 votes for Washburn and 2 for Donnelly. We have already considered the objection to the vote cast in Crookston precinct, Polk County, and to the vote cast in Tamarack and Two Rivers precincts, in Kittson County, the only voting precincts in Kittson County. To reject the votes cast for Washburn in the three precincts in the counties named would still leave him 436 votes, which votes certain members of the committee propose to reject, solely upon the ground that the votes of these two counties were canvassed and returned together by the canvassing board of Polk County (page 64). The abstract of

the vote, as it appears in the record, does show that the vote of these two counties was so canvassed and returned. It is conceded on every hand that Kittson County was, at the time of the election in November, 1878, an unorganized county. It was attached to the county of Polk, an organized county, for election purposes, in accordance with the law of the State of Minnesota, and the return thus made is in exact accord with the requirements of the statute of the State. We give here in full the section of the statute bearing upon that subject. It is as follows:

After the canvass is thus completed, the judges of election, before they disperse, shall inclose the said returns in a cover, seal the same, and indorse thereon the following words, viz: "Election returns of the election district of —, in the county of —," and direct the same to the county auditor of their county; and the said returns shall, within five days of the day of election, be conveyed by one of said judges, to be chosen by lot, if not otherwise agreed upon, and delivered to the said county auditor at his office: *Provided*, That the returns of election in unorganized counties shall be made to the auditor of the county to which they are attached for elective purposes, and the votes shall be canvassed, and certificates of election issued to the persons elected, in the manner provided in this chapter for canvassing votes and issuing certificates of election in organized counties. (Bissell's Statutes, page 171.)

The abstract and certificate thereto and the attestation thereof are in precise accordance with the requirements of the law of the State of Minnesota. It is not true that the vote of the counties of Polk and Kittson is lumped together in such abstract. The abstract itself, as well as the proof in the case, shows that there were but two precincts in the county of Kittson, and the vote of these two precincts is stated in the abstract separately. There is no difficulty about separating this vote on a mere inspection of the abstract, but if it were true that the vote of the several precincts could not be distinguished, it would not be an objection, for still the abstract would be in accordance with the law of the State. It is expressly admitted by the contestant in his argument, and all the way through the case, that the majority for Washburn, as returned in the county of Polk, was 497, and also that the majority as returned for Washburn in the county of Kittson was 181. On what theory members of the committee are now able to say that the vote of these two counties is so intermingled as to be indistinguishable we have not been able to discover. In the contestant's printed brief, under the head of "Polk County," in speaking of the contestee's majority, he expressly states that 497 of his majority was received from Polk County alone (printed brief, page 4). The witnesses, in speaking of these two counties and giving the votes by precincts, also mention the vote, as indicated in the abstract referred to.

The contestant has put into the record a complete abstract of the votes cast in the several counties in the State of Minnesota, in which the vote of Polk County is given, Washburn 659, Donnelly 180; and Kittson County, Washburn 183, Donnelly 2 (Record, pages 58, 72). The same and a similar abstract has also been put in evidence by the contestee, which shows the vote as stated (Record, pages 343, 346). This abstract of the entire vote cast in the third district of the State of Minnesota in itself proves the vote to have been cast for the contestant and contestee as given in the abstract found on page 64 of the record. It is proper to observe that there is nothing in the record to show that other returns of the vote cast in the county of Polk and the county of Kittson may not have been made separately. And it is important to say that in the contestant's notice nothing is said by way of objection to the return made of the vote cast in either of these counties; but, on the contrary, the contestant, in paragraph 7 of his notice, expressly admits that the votes

of these two counties were cast, returned, counted, and canvassed without attacking the regularity of the return or the counting or the canvassing of such vote. He does say in his notice that "the officers receiving, counting, and canvassing said alleged votes were not officers of said election districts or said counties," thus expressly admitting that officers did receive, count, and canvass the votes. There is, however, no objection made to appear by the evidence that the officers were not the *proper officers* to receive, count, and canvass the votes. We are cited to the testimony of one witness, John N. Gilman, to show that this county was not attached to some other organized county for election purposes.

But the proof of this witness is, that as a lawyer he did not know that it was legal for votes to be cast in unorganized counties, and he had never seen a law authorizing certain unorganized counties to be attached to organized counties for election purposes (page 41). The contestant claims in the face of the record and the official returns from Polk County that he has proved that one precinct, to wit, Farley, which gave Washburn 9 votes and Donnelly 24 votes, was not, in fact, in Polk County, as appears by the abstract. If his testimony could be relied upon, and his objection was good, and contestant's notice justified the proof, which it does not, the contestee might be quite willing to have the vote of this precinct rejected. There is no attempt to offer any proof to show that any other precinct canvassed and returned in Polk or Kittson County was not in the counties indicated in the abstract. But the sole witness relied upon to prove that Farley precinct was not in Polk County has no sort of knowledge on the subject. The first question asked him by the contestant (page 226) was as follows:

Q. Do you know whether the polling-place at Farley is in this [referring to Polk County] or Kittson County?

His answer was—

A. I was told that the polls of Farley was not in Polk County. No, sir; nothing else.

His testimony on cross-examination is as follows:

Q. Do you know where the north line of the county lies as regards Farley?—A. I could not tell you exactly where it is, but I thought it was outside of the line.

This is too shadowy to found a judgment upon to overthrow the official returns and canvass of a precinct as made by officers who are to be presumed to have done their duty as precinct, county, and State officers. The testimony itself is not competent, because it is purely hearsay, and shows upon its face that the witness is talking from mere rumor. It is a well-known fact that for many years the vote in these two counties has been counted, canvassed, and returned together for all State officers, as well as for electors and members of Congress.

In the absence of proof it should be conclusively presumed that the election officers in election districts or precincts, and the county canvassing board of Polk County, and the State canvassing board, composed of the governor and the secretary of state, who are required to act in the presence of the auditor of state, attorney-general, and one or more judges of the supreme court, have done their duty. This is so clear, that it can hardly be imagined that further objection would be made to counting 436 votes for Washburn and 135 votes for Donnelly, cast in the county of Polk, as to which there is no other objection than the fact that they were canvassed with the votes from Kittson County. If the return should be defective as to Kittson County it is wholly unobjectionable as to Polk County. There is absolutely no attempt by contestant's notice

or in his argument to deprive Mr. Washburn of a majority of 301 votes in the county of Polk, and it is difficult to properly characterize the attempt to do so now.

In conclusion, it may be proper to say on the subject of the vote of the counties of Polk and Kittson that, notwithstanding the fact that extended oral arguments were made by the contestant, no objection was made throughout them to counting the vote of these two counties on the ground that it was not properly canvassed and returned.

The returned majority for W. D. Washburn is 3,013. If the views of the members of the committee who are in favor of unseating him should be adopted, then there should be added to this majority the unreturned votes cast for him from the counties of Stearns (144) and Morrison (68), 212, which would increase his majority to 3,225. On this theory of the case there should be deducted, on account of unreturned votes claimed to have been cast for Donnelly in the counties of Stearns (396), Morrison (165), and Douglas (61), a total of 622 votes, which would reduce Mr. Washburn's majority to 2,603.

The entire majority for Mr. Washburn in Crookston (168), Polk County, and in Tamarack and Two Rivers precinct (181), (his whole vote in Kittson County), and all the alleged bribed votes (22), as found by a portion of the committee, aggregate 371 votes, which, if deducted from the number ascertained as above, would still leave the sitting member with a majority of 2,232, as to which no bribery is pretended, and as to no portion of which can there be any reasonable or possible pretense for a valid or legal objection.

In the light of the law, and giving due weight to all competent testimony in the case, not even a technical ground can be found for rejecting any part of a majority thus found.

The members of the committee who concur in the annexed resolution declaring that W. D. Washburn was duly elected, &c., do not agree that his true majority is only 2,232.

Ten members (two-thirds) of the whole committee concur in holding that Ignatius Donnelly was not elected, and that he is not entitled to a seat in the House. It seems to the members of the committee who, without qualification, sign this report that it is a gross inconsistency to not find as a logical consequence that W. D. Washburn was duly elected to his seat in the House of Representatives.

A resolution declaring that Ignatius Donnelly is not entitled to a seat in the House of Representatives is reported in accordance with the instructions of the committee.

The members of the committee who sign this report concur generally in the views therein expressed and in recommending for adoption by the House of the following resolutions:

Resolved, That William D. Washburn is entitled to retain his seat as a member of the Forty-sixth Congress of the United States as Representative of the third Congressional district of the State of Minnesota.

Resolved, That Ignatius Donnelly is not entitled to a seat as a member of the Forty-sixth Congress as Representative from the third Congressional district of the State of Minnesota.

J. WARREN KEIFER.
E. OVERTON, JR.
W. H. CALKINS.
JOHN H. CAMP.
W. A. FIELD.

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